

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

April 27, 2000

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, May 11, 2000 at 1:00 p.m., in the Planning Department conference Room, 10th Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Frank Garofalo, Chair; James Barfield (late arrival); Chris Carraher; Bud Hentzen; Bill Johnson (late arrival); Richard Lopez (late arrival); Ron Marnell; John W. McKay, Jr.; Jerry Michaelis; Susan Osborne-Howes (late arrival); George Platt; Ray Warren; Harold Warner, Jr.; and Deanna Wheeler. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Scott Knebel, Senior Planner; Barry Carroll, Associate Planner, and Karen Wolf, Recording Secretary.

1. Presentation on the Sedgwick County/City of Wichita Backyard Drainage Policies Effective.

CHRIS CARRIER, Storm Water Engineer, City of Wichita briefed the MAPC members on the following report, and answered questions.

1. Develop Master Drainage Plan for the subdivision with a minimum of four required grade elevations identified at each lot on the plat. Streets, storm sewer, and sanitary sewer elevations will be checked by the appropriate governmental jurisdiction to assure they are built in accordance with the engineered plans. The developer will stipulate, for each buildable lot, whether a buried basement (B), view-out (VO) or walkout (WO) basement is proposed. The four elevations to be established for each lot or home are:
 - A. Elevation of top of street curb.
 - B. Minimum elevation of top of foundation.
 - C. Minimum elevation of top of view-out wall or a walkout wall, whichever the lot is designed for.
 - D. Rear drainage swale elevations (Survey monuments to be set on grade on each lot line and flagged).

The Master Drainage Plan shall be submitted along with the final plat, a minimum of two weeks prior to consideration by the Subdivision Committee of the Metropolitan Area Planning Commission (MAPC).

2. Record Master Drainage Plan with Register of Deeds.
3. The Master Drainage Plan will provide detailed information for individual builders so that they will have all the necessary information as to the type of residences that can be built on certain lots.
4. Subdivision plats shall clearly label all easements, right-of-ways, or reserves as drainage facilities when said facilities are used as a part of the Master Drainage Plan or lot grading plan.
5. The subdivision plat shall clearly state that a drainage plan has been developed for the subdivision and that all drainage easements, right-of-ways, or reserves shall remain at the established grades and unobstructed to allow for the conveyance of storm water.
6. If the subdivision Master Drainage Plan calls for the drainage of properties by back lot line drainage swales, the minimum allowable swale slope shall be 1.0%. Flatter slopes will require the paving of the swale or the installation of underground pipe and inlets to maintain positive drainage.

Requirements to be imposed on builders are as follows:

1. Builders will be required to develop individual lot grading plans consistent with the subdivision Master Drainage Plan and to construct basement and foundation walls to comply with said plans. The objective of these requirements is to make sure that final grades can be set so that they will work in substantial compliance with the Master Drainage Plan for the lot and area. Minor variances may be allowed providing there is no negative impact on the Master Drainage Plan.
2. Builders will be required to get a verification from a surveyor after basement walls are poured and before plumbing groundwork inspection to verify that wall elevations are built in accordance with the lot grading plan. This verification can be provided by an engineer or registered surveyor and must be submitted to the appropriate building code enforcement agency in order to get the plumbing groundwork inspection. At the time the survey verification is done, the surveyor will be instructed to verify, in addition to the basement wall heights, the elevation of the rear and side lot flow line monuments, two curb elevations in front of the lot, the elevation of the top of any manholes on the property, and the elevation of any storm drainage inlets. Builder will be required to protect and maintain rear flow line monuments during construction.
3. If a walkout, or view-out, is designated as the correct residence on a particular lot and the builder wishes to vary from it, in terms of the elevation to be built, it will be allowed. However, the builder must consult with the design engineer for the subdivision and provide proof to the code enforcement agency that has jurisdiction that the drainage requirements can still be met.

GAROFALO "Marvin, do we need to take any action on this?"

KROUT "You could make a motion saying that you concur with this."

MOTION: That the Metropolitan Area Planning Commission concur with the report and forward it on to the governing body.

MCKAY moved, **CARRAHER** seconded the motion, and it carried unanimously (13-0).

Barfield arrived at the meeting at 1:07 p.m.

Osborne-Howes arrived at the meeting at 1:10 p.m.

Item taken out of order:

GAROFALO "I need to mention here that Agenda Item No. 8 has been withdrawn from the agenda. Is there anyone here to speak on this item? Seeing none, that is taken care of."

8. **ZON2000-00008** - Sedgwick County Zone change from "RR" Rural Residential to "LC" Limited Commercial on property described as:

A tract of land beginning 417.42 feet East of the Southwest Corner of Section 32, Township 25 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence North 208.71 feet; thence East 208.71 feet; thence South 208.71 feet; thence West 208.71 feet to the point of beginning. Generally located northeast of Seneca and 77th Street North in Valley Center, Kansas.

BACKGROUND: The applicants are requesting approval of "LC" Limited Commercial zoning on one-acre of unplatted property currently zoned "RR" Rural Residential. The application area is a rectangular shaped parcel and is located northeast of Seneca and 77th Street North, Valley Center, Kansas. The applicants are requesting a zone change in order to permit an auto repair service. In 1997, the applicant and his brother opened the business unaware of the need for a zone change. The applicant's brother has now left the business and does not live on site. The applicants operate the business, live in an adjacent dwelling, and have no outside employees.

The applicants forwarded a letter to their neighbors explaining their request for a zone change (see attachment). The applicants reported that their neighbors are supportive of the business but would object to a salvage yard operation. The applicants only have one acre of land. This acreage does not conform to the requirements for a rural home occupation per the Unified Zoning Code (five acres) that could be waived as part of a Conditional Use request. Consequently, a zone change request is needed to be technically in compliance. The applicants have submitted a photograph of their current operation that depicts the uses on the property (see attachment)

There is a solid cedar hedgerow located along the north property line, except for a gap north of the garage. This gap will need to be screened with appropriate screening materials (fencing or landscaping). Screening will also be needed on the east and west sides of the business. Lighting for the facility is on the garage and reflected away from residential uses per zoning ordinance. Currently the parking lot on the business site is unpaved. Landscape plantings are currently in place on the property. The applicants have one small sign affixed to the south face of the auto repair garage. There are commercial uses approximately one-mile east (81 Speedway) and approximately one-mile west (Bar-Te & Associates, TNT Auto Repair & Ramsey Signs). If approved, without having approval of a variance by the County's Board of Zoning Appeals, the applicants will be required by code to screen with a six-foot fence (materials customarily used in construction) along the east, west and north property lines of the tract to be rezoned to "LC" Limited Commercial.

CASE HISTORY: None.

ADJACENT ZONING AND LAND USE:

NORTH: "RR" Rural Residential	Undeveloped Farmland
EAST: "RR" Rural Residential	Vacant Lot
SOUTH: "RR" Rural Residential	Undeveloped Farmland
WEST: "RR" Rural Residential	Vacant Lot

PUBLIC SERVICES: The site has access via a private driveway that is maintained by the property owners. The driveway feeds onto 77th Street North; this driveway is approximately 500 feet east of Seneca. 77th Street North is a paved township road with no traffic data available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "agricultural" use. This category has the intent of protecting agricultural resources and is meant to

accommodate agricultural operations on substantial acreage. This category can allow other uses common in rural areas, which are no more offensive than normal agricultural uses. The Plan wants to minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments. The Plan suggests "limiting commercial development in rural areas to activities which are agriculturally-oriented or provide necessary convenience services to residents in the immediate area, or provide highway-oriented services at interchange areas." Furthermore, the Plan suggests "confining highway-oriented, auto-related and non-residential commercial uses to a limited number of urban areas, such as portions of Kellogg, Broadway, the CBD fringe, and other similar areas."

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be DISAPPROVED. If, however, the MAPC and Board of County Commissioners determine that the rezoning is appropriate, staff recommends that platting occur within one year of approval and the following conditions:

1. Signs shall be limited to the existing single sign with an area of twelve square feet. The sign shall remain on the south face of the garage.
2. The subject property shall be restricted to a "Protective Overlay #71" which restricts the site to those uses permitted in the "RR" Rural Residential District and "Vehicle Repair Limited." No additional outside employees are permitted. No more than two customer vehicles may be parked outside overnight at any one time.
3. The owner of the subject property shall maintain the solid row of evergreen trees along the north property line.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There are single-family homes located to the east and west of this property, zoned "RR." The property to the north and south is also zoned "RR" but is undeveloped agricultural land.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: The property to the north and south is undeveloped land. There are vacant lots, owned by the applicants, on the east and west side of the property. The Protective Overlay should reduce any detrimental effects imposed by this proposed zone change. The business has been in operation for approximately three years with little or no detrimental impact to nearby property.
3. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned "RR" and is developed with a single-family home and adjacent garage. The property is suitable for these uses.
4. Impact of the proposed development on community facilities: The private driveway is required to be maintained by the applicants. The impact along 77th Street North will be minimal.

FRANK GAROFALO, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

OSBORNE-HOWES "Is Item 2/1 going to be pulled? I would like to ask a question about it."

GAROFALO "Okay, Item 2/1 will be pulled."

2. Subdivision Committee items 2/2, 2/3, 2/4, 2/5, 2/6, and 2/7 were approved subject to the Subdivision Committee recommendations.

CARRAHER moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously (13-0).

2/2. SUB2000-10 - Final Plat of BENCOR 2ND ADDITION, located on the southeast corner of 13th Street North and Waco.

- A. Municipal services are available to serve the site. City Engineering needs to comment on the need for any easements or guarantees. A guarantee shall be submitted for abandonment of the existing sewer line. A temporary easement should be established to cover the sewer line until abandonment.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. The plat proposes one access opening along both Waco and 13th St. North. In accordance with the approved site plan, no access openings are proposed along Fairview, and complete access control should be dedicated along Fairview. Distances should be shown for all segments of access control. The dedication of access controls shall be referenced in the plat's text. In accordance with the Subdivision regulations, any access openings located within 250 feet of the intersection of 13th St. North and Waco are limited to right-turns only, and shall be referenced on the face of the plat; or a guarantee provided for the future construction of a raised medial.
- E. The Applicant shall guarantee the closure of any driveway openings being located in areas of complete access control or that exceed the number of allowed openings.
- F. Traffic Engineering needs to comment on the need for additional right-of-way for 13th St. North or Waco. A 50-ft half-street right-of-way is typically required for arterials. Traffic Engineering has approved a 40-ft half-street right-of-way.
- G. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- H. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- I. A "Notice of Protective Overlay" document indicating the Protective Overlay has been filed with the MAPD shall be submitted.
- J. The legal description shall be revised to reference Lot 1226 of the Lewellen's Addition and include a metes and bounds description of Reserve A.
- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army

Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- P. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- Q.. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Southwestern Bell requests that the vacated alley be retained as a utility easement. Any relocation or reconstruction of utilities made necessary by this plat shall be the responsibility of the Applicant.
- T. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.
- U. The Applicant shall guarantee the paving of the proposed alley.

2/3. SUB2000-18 - One-Step final plat of ANGLE ACRES 2ND ADDITION, located south of 47th Street South, east side of Seneca.

- A. The Applicant shall guarantee the extension of City water and sanitary sewer to serve the lots being platted. City Engineering needs to comment on the need for any additional guarantees or easements. No additional guarantees or easements are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. An off-site drainage easement is required for storm sewer.
- E. Traffic Engineering needs to comment on the street jog of 150 feet of 50th St. South with 50th St. South in the A. Verne Roberts Addition to the west. Traffic Engineering has approved the location of 50th St. South.
- E. The Applicant shall guarantee the closure of any driveway openings being located in areas of complete access control or that exceed the number of allowed openings.
- F. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- G. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- H. The Applicant shall guarantee the paving of the proposed interior streets in addition to Gold Street.
- I. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- J. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- K. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all

drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. KGE has requested additional easements.
- U. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

2/4. SUB2000-26 - One-Step Final plat of SOUTH HEDGEWOOD ESTATES, located on the west side of Hoover, south of 95th Street South.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Standard soil testing is required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording. A drainage plan is required.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. The Applicant shall coordinate the removal or modification of any terraces with NRCS. A Floodway Reserve Agreement is required along the north line of Lot 1.
- D. County Engineering needs to comment on the access controls. The plat proposes one access opening per lot along Hoover. The access openings shall be located no closer than 100 feet from the Exception Area.
- E. MAPD and County Engineering request that a contingent dedication be platted for the exception area to be effective upon the platting and division of the adjoining property to the west.
- F. The applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- G. The southerly lot shall be relabeled as Lot 1 and blocks shall be designated.
- H. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)

- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
 - K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
 - L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
 - M. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
 - N. Perimeter closure computations shall be submitted with the final plat tracing.
 - O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
 - P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
 - Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.
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2/5. SUB2000-27 - One-Step Final Plat of RITCHIE'S FIRST ADDITION, located on the east side of Salina, South of 16th Street North.

- A. Municipal services are available to serve the site. City Engineering needs to comment on the need for any guarantees or easements. No additional guarantees or easements are needed.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- E. The final plat shall reference a tie point to a section corner.
- F. The platted lot exceeds the maximum lot width to lot depth ratio of 2.5 to 1. A modification will need to be approved.
- G. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- H. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- I. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- J. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- K. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- L. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- O. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- P. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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- 2/6. DED2000-08** - Dedication of additional street right-of-way from Bencor Investments, LLC, for property generally located on the northeast corner of Central and West Street.

LEGAL DESCRIPTION: That part of Lot 1, Rexstiller Addition to the City of Wichita, Sedgwick County, Kansas, described as beginning 20 feet south of the southwest corner of Lot 1, NBW Building Addition, to the City of Wichita, KS; thence east parallel with the south line of Lot 1, NBW Addition, 10 feet; thence south parallel with the west line of Lot 1, Rexstiller Addition, 307 feet; thence southeasterly to a point 25 feet east of the west line of said Lot 1, Rexstiller Addition; thence east parallel with the south line of said Lot 1, Rexstiller Addition, 175 feet; thence south parallel with the west line of said Lot 1, Rexstiller Addition, 10 feet to a point on the south line of said Lot 1, Rexstiller Addition; thence west 200 feet to the southwest corner of said Lot 1, Rexstiller Addition, thence north 332 feet to the point of beginning.

As a requirement of Lot Split No. L/S-1029, this dedication is being made for the purpose of additional right-of-way along West Street.

Planning Staff recommends the granting of this dedication be accepted.

- 2/7. DED2000-09** - Dedication of Access Controls from Bencor Investments, LLC, for property generally located on the northeast corner of Central and West Street.

LEGAL DESCRIPTION: That part of Lot 1, Rexstiller Addition to the City of Wichita, Sedgwick County, Kansas, described as commencing 20 feet south of the southwest corner of Lot 1, NBW Building Addition, to the City of Wichita, KS; thence east parallel with the south line of Lot 1, NBW Addition, 10 feet for a point of beginning; thence south parallel with the west line of Lot 1, Rexstiller Addition, 307 feet; thence southeasterly to a point 25 feet east of the west line of said Lot 1, Rexstiller Addition; and 10 feet north of the south line of said Lot 1, Rexstiller Addition; thence east parallel with the south line of said Lot 1, Rexstiller Addition, 175 feet; thence north parallel with the west line of said Lot 1, Rexstiller Addition, 97 feet; thence right angles to the last described line, 6 feet; thence north parallel with the west line of Lot 1, Rexstiller Addition, 40 feet; thence east at right angles to the last described line, 6 feet; thence north parallel with the west line said Lot 1, Rexstiller Addition; 185 feet to a point 20 feet south of the south line of Lot 1, NBW Building Addition; thence west 190 feet to the point of beginning.

As a requirement of Lot Split No. L/S-1029, this dedication is being made for the purpose of access controls on West Street and on Central.

Planning Staff recommends the granting of this dedication be accepted.

- 2/1. S/D 00-06** - Final Plat of STONEGATE PARK, located north of 47th Street South, west side of Greenwich Road.

- A. Since sanitary sewer is not able to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval from KDHE. This site has obtained approval from KDHE. The Health Department has concerns due to the lack of public sewer but will work with KDHE regarding testing for a lagoon system for the site.

- B. The site is beyond the Four-Mile Creek service area. County Engineering should comment on the status of an extension of the Four-Mile Creek sanitary sewer to serve the site. Sewer service is not available.
- C. The site is located within Rural Water District No. 3. The applicant shall contact this water district to determine the ability of this property being platted to connect to their water line and submit a letter from the water district regarding any requirements.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- E. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage easement located on the southeast corner of the plat should be relabeled as a Floodway Reserve and connect with the Floodway Reserve on the property to the south. A HEC-2 run is required.
- F. County Engineering needs to comment on the need for access controls. The dedication of access controls shall be referenced in the plat's text. County Engineering has required access control except for two openings along Greenwich. Complete access control is required adjacent to the Floodway Reserve.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. County Engineering needs to indicate the need for additional right-of-way for Greenwich. An additional 10 feet of right-of-way is required for Greenwich (60 feet of half-street right-of-way required).

The requested right-of-way has been denoted on the final plat.
- I. County Fire needs to comment on the acceptability of the plat. County Fire has required 20-ft wide openings. The internal streets shall meet suburban street standards. The plat is acceptable to County Fire Department.
- J. The southwest tie point shall reference the north half of the quarter section.
- K. The applicant shall provide a covenant for the Floodway Reserve which provides for ownership and maintenance of the Reserve. The covenant shall grant, to the appropriate governing body, the authority to maintain the Floodway Reserve in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owners by the governing body.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- U. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department

detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MCKAY "I would like to disclose that I have been contacted by the applicant on this item. "

At this point, every Commissioner said that they had been contacted by the applicant."

PLATT "I was contacted by other people other than the applicant on it, too."

KROUT "Would you like to disclose the nature of those contacts and how it might affect how you are looking at this case?"

MCKAY "Jay Russell contacted me as to what was going on. It didn't change my vote at all, based on the facts."

GAROFALO "The same here. It was just an explanation on what they are wanting to do."

WHEELER "I had a brief phone conversation with Mr. Russell that this was coming before us. It wouldn't affect my vote."

LOPEZ "The same."

MARNELL "The same."

PLATT "And I also received information in the mail from people who were in opposition to it."

KROUT "Do you have copies of them?"

PLATT "I don't know whether or not I do."

KROUT "That's okay."

OSBORNE-HOWES "I had a personal visit rather than a telephone call."

PLATT "I got some material from Commissioner Warren in the mail, too. I don't know if that was for or against it."

Bill Johnson arrived at the meeting at 1:40 p.m.

GAROFALO "Are there any other comments? Okay, Neil, go ahead."

NEIL STRAHL, Planning Staff. This is the Stonegate Park Addition, located north of 47th Street South on the west side of Greenwich Road. It is an 80-acre site, zoned 'SF-20' Single-family residential. The site is located in the County within 3 miles of Wichita City limits. The site obtained approval in 1969 by the Board of County Commissioners for an expansion of an existing mobile home park, limited to the eastern 40 acres of the site. The applicant currently proposes expansion of the manufactured home park within the eastern 40 acres (indicating) right here, along with a sewage lagoon system. The site has obtained approval from KDHE for the lagoon system. The County Engineering has approved two openings along Greenwich."

GAROFALO "Are there any questions of Neil?"

KROUT "I have some comments, for the record and it probably would be better for me to make them before the applicants have an opportunity in case they want to respond to any of this.

Planning staff is NOT recommending that you deny this subdivision plat. However, I do want to point out to you why I think this case should be a cause for real concern, for anyone who wears the hat of planner or planning commissioner or is concerned with smart growth in the county.

This land was zoned back in 1969 by the MAPC and County Commission when County zoning only extended out 3 miles from Wichita, and Wichita's boundaries had expanded to include this property within that ring. A handful of mobile homes sat on a small portion of a 40 acre parcel, and still today. The owner indicated he would like to expand his park someday. So he was granted a Conditional Use for 40 acres of mobile homes, without a plan for his property and without notice to his neighbors. However, the County Counselor's office has ruled that the zoning was legal, and now the new owners want to develop this property for a mobile home park. Probably, the applicants can make a good claim that they have investment-backed expectations to develop this mobile home park, based on the zoning of the property and compliance with the subdivision regulations.

This property is 2 ½ miles south of the south boundary of the 2030 urban service area in the updated Comprehensive Plan that the MAPC just approved. The development of this property for the proposed use is completely contrary to the Comprehensive Plan, even the updated version. This mobile home park represents an unfortunate throwback to the kind of leapfrog growth that was last permitted in the 1960s and 1970s to the east and west of Wichita. The mobile home parks and subdivisions in that area, like this one, were permitted to develop beyond where any city services could be extended, and be placed on private lagoons and small treatment plants. Eventually, most of those systems failed, and the federal government ordered Sedgwick County to establish public sewer districts to relieve the environmental problems that occurred. This is the kind of development that both our local health officials and KDHE staff have told us for many

years to avoid repeating. However, the Health Department is now telling us that they do not believe they have jurisdiction – an issue that we are going to be looking into further -- and KDHE indicates that a lagoon for this proposed development can probably be permitted that meets their standards.

Planning staff also raised the issue at the Subdivision Committee level of whether a new urban density mobile home park should be permitted without an urban level of fire service, meaning City water lines with sufficient pressure to feed fire hydrants. The Subdivision regulations state that the Fire Department with jurisdiction determines the acceptability of the development from a fire safety standpoint, and the County Fire Department apparently does not think this development presents a problem. The Planning staff was very surprised to hear this response, and we think that the subject of what is adequate fire protection is an appropriate subject for the MAPC to review in the future, just like the subject of what is adequate park and recreation service. So we are going to be inviting the City and County fire departments to a workshop this summer to discuss firefighting methods and philosophies.

In sum, this appears to be one more case where, to quote Commissioner Warren: "like it or not, there are no legal reasons to deny this plat." But I hope that this time, the MAPC will also state for the record that you don't like it, and ask the Planning Department to come back to you with stronger policies and regulations, so developments of this type can be prevented in the future."

GAROFALO "Lets hear from the applicant, if he wishes to speak."

JAY RUSSELL "I am the applicant and I would like to respond real quickly to Marvin's comments. It seems a little bit difficult to take something that was approved back in 1969 by the County Commission at that time and granted the zoning that these people needed to establish that mobile home park, which has 32 units at this time that are in extreme need of repair and the park definitely needs to be upgraded to a better level and as we can tell from the 2030 service plan, we are still going to be 2-1/2 miles away from the city in 30 years.

It appears to me that we need to do something with this facility before it becomes a real problem. But he made a lot of comments there that may be appropriate to discuss, but I think I am going to go more toward the facts on this case. The zoning was granted in 1969, and per Rich Euson's letter of December 29, 1999 that we introduced in the past, the Comprehensive Plan has no effect on the planning. Our thought is that we just want to remodel this existing one. There have been some discussions with some of you about our desire to expand it in the future. That is an entirely different hurdle and whether we get to that point or not is yet to be seen.

Our sewer options, we basically have three different options that we can try to service this with. I believe that at this point, the lagoon option is the one that we are real confident that is our best option right now. KDHE has given us a letter and we introduced that into the Subdivision meeting last week. I am sure that at this time that is probably the avenue we are going to go with. On the Fire Department issue, they have had the same policy now for many, many years. That policy is that if sufficient water pressure is there, within a quarter to half a mile, that they want the fire hydrants installed. We have agreed that at the time that they are available within that type of a distance, that we definitely will install them. I believe we meet every one of their requirements.

The water service issue has been addressed. We have a contract with the Rural Water District No. 3 for 100 water taps. The drainage issue that was discussed in Subdivision has been addressed. We are not just going to look at the water on our site; we are going to look at how it effects people upstream and downstream from us. I think that County Engineering has agreed to that. And finally, I think that this facility has the zoning and we need to do something with it to bring it up into a little better condition. Are there any questions?"

GAROFALO "Are there any questions of Mr. Russell?"

OSBORNE-HOWES "I just have a couple. Is the entire design in the 100-year flood plain?"

RUSSELL "No. Just the far western portion of it, which does not have the zoning for it."

OSBORNE-HOWES "And, I guess you chose not to bring the entire site, just the part for expansion. You chose not to bring all of that at once, but just the site that currently has the zoning. Are you going to be replatting or doing something in the future, coming back with a request for an expansion?"

RUSSELL "I have discussed that option with the Planning staff and with several of the members when I talked to them. I am not sure that that decision has been 100% decided."

WHEELER "I guess I didn't follow Susan's question. How much of this site are you currently platting?"

RUSSELL "The east 40 acres. (Indicating) Everything from here to the east. That is the only part that has the zoning on it. If we do anything to the west, we will have to come back and get a zone change."

WHEELER "So this before us actually states 78.9 acres, but in reality what we are looking at is 40 acres, is that correct, Marvin?"

KROUT "Yeah. Was it originally submitted for the full 80 acre plat?"

RUSSELL "No."

KROUT "This is just a 40 acre plat."

WHEELER "Okay."

MARK SAVOY (From the audience) "Most of that back piece is a flood way reserve."

GAROFALO "Are there any other questions? Okay, thanks, Jay. Is there anyone else who would like to speak in favor of this plat? Is there anyone who wishes to speak in opposition? Okay, seeing none, then we will bring it back to the Commission."

WARREN "Mr. Chair, as was quoted, I did support this in the Subdivision Committee meeting we had last Thursday. As with all mobile home parks, this one had a lot of discussion, a lot of conversation, a lot of questions. The major things that I had seen come up here though that could give us concern would be drainage, sewer and fire, and we listened to testimony, probably more of it in Subdivision than we have in this meeting, from the experts in this field, and none of them have given us any facts that would tell us that we have a real problem in either drainage, sewer or fire. So that is pretty much what is motivating me. I think I will state again that we have no legal grounds to turn down this plat. It is not a zoning case, it is a platting case."

MOTION: That the Planning Commission recommend to the governing body the request be approved.

WARREN moved, **CARRAHER** seconded the motion.

PLATT "I would like to ask a question of someone from the County Fire Department."

GAROFALO "Is there anyone here from the County Fire Department? Will you please come to the podium?"

GREG THOMPSON "I am the Sedgwick County Fire Marshall."

PLATT "Sir, is there any limit to the number of subdivisions like this that you would find a problem in Sedgwick County with if we were to approve it?"

THOMPSON "Do you mean is there a limit to the number of these subdivisions that we would allow within Sedgwick County?"

PLATT "Yes."

THOMPSON "At this point, no."

PLATT "Thank you."

HENTZEN "I would like to ask Marvin a question."

GAROFALO "Does anyone have any other questions of the Fire Marshall? Okay, Bud, go ahead."

HENTZEN "As I recall, on former cases of mobile home parks, didn't you provide us with a picture of areas that were already zoned properly for mobile home parks, and kind of indicated that if there was an application in here outside of that map that you were not in favor of it. Does this one fall into that category of already zoned properly for mobile home parks?"

KROUT "The map that you are talking about, Commissioner, was a map for a smaller portion of the county, it wasn't a county-wide map. It was a portion of the county from about Hillside on the east to West Street on the west in the south part of the county. So we didn't look at where there was zoning available for mobile home parks outside of that area."

HENTZEN "It seems like that quadrant of the county was the one that was heavily zoned for mobile home parks and this is not in that same quadrant, but yet it has proper zoning. I took your remarks to mean that you are not in favor of this application."

KROUT "My remarks today?"

HENTZEN "Yeah."

KROUT "Oh. I am not in favor of this development, but I don't think there are sufficient reasons to deny the plat."

HENTZEN "Okay."

OSBORNE-HOWES "I just have a comment. I looked at this both ways and I understand what Marvin is saying. I guess I look at this and also think right now what we could also be talking about is revitalization of part of this area, and if there is

already the ability to zone the entire 80 acres, then I can understand why we could turn it down, but at the same time, I guess I have a couple of concerns and that is that this could lead to more leap-frog development. Especially if, in order to make this work financially for the developer, there is going to be another request for expansion, then I don't know that that necessarily means that I would be supportive of that. So I see both sides."

JOHNSON "Marvin, those last couple of mobile home cases we had, which I think were around 55th Street and west of Broadway, it seems like the Planning Commission approved it and the County Commission didn't approve them."

KROUT "The last two cases were 55th and Broadway, and I think the Planning Commission's vote was still to deny. It was a closer vote the second time, and the County Commission denied it. We had another case that was a city case between 47th and 55th Street, west of West Street. The Planning Commission originally recommended denial. That was sent back and you recommended approval the second time and the City Council approved that mobile home park."

JOHNSON "Okay. But I think that most of the conversation I can remember was that most of the opposition said they didn't want any more in that part of the county or city. I guess that is the only reason I see in this case; all of a sudden we are going to try to do one somewhere other than 55th and Broadway or 55th and Seneca. Do you think that will be a good place? I think those are the instructions that we kind of passed along to the applicant before. It needed to be someplace else besides in that park, which isn't this."

KROUT "I guess I will be honest with you and say that I don't think any mobile home park in Sedgwick County is a plus. We encourage people to go to Park City to achieve those objectives."

(Laughter here)

But in your work plan, as we described to you earlier in the year, we said that we think that the issue needs more discussion, so we want to work with the Planning Commission on developing a clearer policy about both the location and the design of future mobile home parks in the county. And we also have a neighborhood plan that we are going to be doing in the south Wichita/Haysville area and I am sure there are residents there who have already identified them as one of the issues that they want to talk about.

So I think we will be talking about that issue some more. We have had more than one inquiry for mobile home parks that could sprinkle in other parts of the community, so you may have an opportunity to address them one on one, one at a time over the next year."

JOHNSON "There is also a mobile home park that is almost due west of this, like about a mile."

KROUT "Yes, there is."

JOHNSON "Is it mobile home zoning, or is it platted?"

KROUT "I don't know if it is non-conforming or not. I will let you know at the next meeting."

JOHNSON "Thank you."

BARFIELD "Initially, Marvin, the Planning Department had asked for denial. Now, is the change of heart based strictly on advice from the County Commission? Or has anything else taken place to cause that?"

KROUT "I think that the Health Department deciding that the State has jurisdiction in this area in terms of permitting the lagoon is probably the key reason why. I think the County Fire Department always has jurisdiction, and their recommendation was clear at the Subdivision Committee meeting."

BARFIELD "So was the information we had in Subdivision solicited from the Wichita Fire Department?"

KROUT "Did you receive information from the Wichita Fire Department?"

WARREN "In Subdivision we had a letter from them."

KROUT "I shared the County Fire Department's response on fire safety with the City Fire Chief and asked him if he agreed or had any comments on that. You saw his response. I think that that is an issue that deserves more attention, and that is why I said that we want to set up a workshop later this year to have the fire department talk about their philosophies and to maybe address further Commissioner Platt's question, which was how many of these can the County Fire Department handle if we approve it. But I think that clearly in this case, according to the Subdivision Regulations, this is the county's call on fire regulations."

BARFIELD "I do think that since the full Commission is going to vote, the full Commission should have access to that information."

OSBORNE-HOWES "Are there any other mobile home parks of this proposed density in the county now? I am just curious."

KROUT "I know of a couple out west, on West Kellogg that are still in the county."

OSBORNE-HOWES "Of this proposed density?"

KROUT "Yes, but they are much older. Nothing that has been approved in the last 20 years."

OSBORNE-HOWES "That does not have access to water?"

KROUT "Yes."

GAROFALO "Neil, I just want to clarify for myself, we are talking about just 40 acres here that is going to be involved with this plat?"

STRAHL "No, the entire 80 is platted."

KROUT "But only these 40 acres is zoned to permit a mobile home park development, so that is the only portion of the tract that will be developed with pads for mobile home sites."

GAROFALO "Okay, that is what I wanted."

OSBORNE-HOWES "Only 40 of the acres will be developed as mobile home sites."

KROUT "By this plat. He still has the option to come back in and request the mobile home zoning to expand the park."

WHEELER "The current zoning is for 40 acres only?"

KROUT "Right."

MOTION: That the question be called.

LOPEZ moved, **MICHAELIS** seconded the motion, and it carried with 13 votes in favor and 1 in opposition (Platt).

VOTE ON THE ORIGINAL MOTION: The motion carried with 14 votes in favor. There was no opposition.

PLATT "Now, may I make a comment in terms of justifying my vote? For the record, I want to say that I voted in favor of this plat. I did so reluctantly but did so because of our legal advice that we have no other choice. I do want to note it for the record that I find it very disquieting in the year 2000 we are approving an urban density level area out in the county without the standard of water, sewer or fire protection that would be commonplace, assumed and expected in that kind of a city anyplace in the United States. I think we are in a bind. That is unfortunate. I would certainly urge the governing bodies to take immediate action to make sure that this doesn't happen again."

WHEELER "I would just like to make a comment, also for the record, I supported this plat because I feel like once zoning is in place it is not an issue of 'is this an appropriate use or not' because that is existing. It is a matter of they met the platting requirements."

But as we have discussed somewhat in the Comprehensive Plan update, I think there is a need for us to re-evaluate mobile home development and new zoning in the county, and I would urge the governing bodies, this is a separate issue and it was too complicated to address in the Comprehensive Plan. There are a lot of issues that dove-tail into it and I know the county has made comments that they are looking at the issues of sewer treatment plants, lagoons, those types of things. I assume at some point we might be addressing those issues at the Planning Commission, or at the county level."

WARREN "As long as we are just speaking for the record.... I didn't agree with Commissioner Platt that we just need to carte blanche have some kind of a ruling that covers everything in the county. I think each one of these cases is going to have to come up and be judged on an individual basis, but I don't think there is anybody on this Commission who has the expertise to question KDHE, or even County Health for that matter, and we have to rely on those people. They are the ones that told us that this was a 'go' case. I think we have insulted the Sedgwick County Fire Department. They can fight these fires. They have the equipment, they have the know-how and they have done it. I feel bad about that because like I said, they came in and said ladies and gentlemen we can take care of it, we know how to do it. I don't think any of us are fire experts enough to question them, and we do not have any choice."

GAROFALO "Perhaps we need to look at having a workshop as you suggest, Marvin, on the whole issue of mobile or manufactured homes in the county and closer to the city and in the city. Maybe we ought to arrange that."

KROUT "We are going to try to do that. And we definitely are setting up a series of summer brown bag lunch sessions like we have had before. We want to talk about fire service. I think that is an issue that we have wanted to talk about for a long time."

3/1. VAC2000-0005 - Richy and Cynthia Fuller request to vacate a portion of a front yard setback described as:

That part of Lot 8, Block A, Auburn Hills 2nd Addition, Wichita, Sedgwick County, Kansas commencing at the northeasterly corner of said Lot 8; thence S52deg40'41"W along the northerly line of said Lot 8, 25.87 feet to the intersection of a 25 foot building setback line; thence southeasterly along said setback line, said setback line being a curve to the left, having a central angle of 03deg55'09" and a radius of 75 feet, an arc distance of 5.13 feet, (having a chord length of 5.13 feet bearing S51deg21'51"E) to the point of beginning; thence continuing along said 25 foot building setback and said curve to the left, having a central angle of 10deg02'51" and a radius of 75 feet, an arc distance of 13.15 feet, (having a chord length of 13.14 feet bearing S58deg20'15"E); thence N44deg33'54"W, 12.76 feet; thence S45deg26'06"W, 3.13 feet to the point of beginning. Generally located east of 135th Street West and south of Maple on Limuel court (543 W. Limuel Court).

The applicant is requesting to vacate a portion of a platted front yard 25-foot setback. Upon purchase of the home the applicant was made aware of the minor protrusion of the home into the setback and wishes to resolve the problem through this vacation.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time April 4, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described street right-of-way, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

Therefore, the vacation of a portion of street right-of-way described in the petition should be approved.

The Subdivision Committee recommends approval.

3/2. VAC2000-00006 - 47th Street Associates, c/o Leslie Rudd request the vacation of a portion of a 35-foot building setback and a portion of access control along 37th Street North, described as:

SETBACK VACATION:

The south 5 feet of the north 35 feet of Lot 1, Block B, Northridge Industrial Park, Wichita, Kansas, EXCEPT the west 35 feet thereof, TOGETHER with the south 5 feet of the north 35 feet of Lot 2 in said Block B.

ACCESS CONTROL VACATION:

The east 50 feet of the north line along Lot 2, Block B, Northridge Industrial Park, Wichita, Kansas. Generally located at the southeast corner of Poplar and 37th Street North.

The applicant is requesting to vacate a portion of a platted 35-foot building setback and a portion of access control along 37th Street North for future development of this site.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time April 4, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described street right-of-way, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

Therefore, the vacation of a portion of street right-of-way described in the petition should be approved.

The Subdivision Committee recommends approval.

LISA VAN DE WATER, Planning Staff "These vacation cases that were heard by the Subdivision Committee last week. Both were approved. I have nothing further to add, but would answer any questions that the other Commissioners might have."

GAROFALO "Is there anyone here to speak on these agenda items? If not, we can take a motion."

MOTION: That the Planning Commission recommend to the governing body that the request be approved, subject to staff comments.

MCKAY moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously.

ZONING:

4. **Case No. CUP2000-00004-DP111#4** - Wal-Mart Properties, Inc. (Owner/Applicant); Kaplan, McMillan, & Harris c/o Robert Kaplan; Ferris Consulting c/o Greg Ferris; an Company PA c/o Russ Ewy (Agents) request an amendment to permit outdoor storage where "GC" General Commercial zoning exists on Parcel 2, on property described as:

Lot 7, Block 1, Mediterranean Plaza Commercial Second Addition, an addition to Wichita, Sedgwick County, Kansas, TOGETHER WITH Lot 2, Block 2, Home Design Center Addition, Sedgwick County, Kansas. Generally located north of 29th Street North and east of Rock Road.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting an amendment to the Mediterranean Plaza CUP to permit outdoor storage where "GC" General Commercial zoning exists on Parcel 2. The subject property is a 2.56-acre platted tract located north of 29th Street North and east of Rock. Outdoor storage is permitted in the "GC" General Commercial district but is not a permitted use in the Mediterranean Plaza CUP. Changes in permitted uses that permit more intensive uses require an amendment to the CUP.

The applicant submitted a site plan (attached) that shows a 30,600 square foot outdoor storage area that would contain up to 50 storage containers or trailers containing merchandise. The outdoor storage would be located approximately 70 feet east of the existing Wal-Mart building within an existing parking lot. Existing landscaping consists of shade trees spaced 40 feet apart and ornamental trees spaced 20 feet apart along the east and south property lines. According to the site plan, Wal-Mart would have 32 parking spaces over the number required by the Unified Zoning Code after the reduction in parking spaces for the outdoor storage area.

The surrounding area is predominately developed with commercial uses, with the nearest residentially-developed properties located approximately 600 feet to the southeast in the Penstemon 2nd Addition. To the north is a theater and a bowling alley on property zoned "GC" General Commercial and "LC" Limited Commercial. To the east is manufacturing and warehousing on property zoned "GC" General Commercial and a tavern on property zoned "LC" Limited Commercial. To the south is a veterinarian office on property zoned "LC" Limited Commercial and a church on property zoned "SF-6" Single Family Residential. To the west are numerous retail businesses on property zoned "LC" Limited Commercial.

CASE HISTORY: DP-111 (Mediterranean Plaza CUP) was approved in 1981, with three subsequent amendments and other adjustments. The subject property is platted as a part of the Home Design Center Addition, which was approved in 1990.

ADJACENT ZONING AND LAND USE:

NORTH: "GC" & "LC"	Recreation and Entertainment, Indoor
SOUTH: "LC" & "SF-6"	Animal Care, Limited; Church; Single Family
EAST: "GC" & "LC"	Manufacturing, Limited; Warehousing; Tavern
WEST: "LC"	Retail

PUBLIC SERVICES: This site has access to Rock, a five-lane arterial with 1997 traffic volumes of approximately 23,000 vehicles per day, 29th Street North, a three-lane arterial with 1997 traffic volumes of approximately 8,000 vehicles per day, and Penstemon, an extra-wide, non-residential local street with no traffic volumes available. The 2030 Transportation Plan estimates the volumes on Rock and 29th Street North to increase to 29,000 and 11,000 vehicles per day, respectively. Municipal services are available to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend

that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. Outdoor storage shall be limited to the west 200 feet of the north 153 feet of Lot 2, Block 2 of the Home Design Center Addition.
2. The outdoor storage area shall be screened by an 8-foot high masonry wall on the north, south, and east. The masonry wall shall be constructed of the same material and color as the existing masonry wall on the north property line. If stored materials or containers exceed 8 feet in height, a solid screening fence (chain link with woven black mesh or similar screening) shall be provided inside the masonry wall to the height of outdoor storage material.
3. Existing landscaping along the east property line where Parcel 2 fronts Penstemon shall be supplemented per a landscape plan approved by the Director of Planning. The additional landscaping shall consist of ornamental trees planted 10 feet apart from each other and the existing ornamental or shade trees.
4. General Provision #5 shall be modified to replace the phrase "Section 28.04.139 of the" with the term "sign" when referring to the Sign Code of the City of Wichita. Also, General Provision #5 shall be modified to require that ground/pole signs shall be spaced 150 feet apart on Parcel 2 and at least 150 feet from signs on other parcels in the CUP.
5. General Provision #14 shall be modified to replace the phrase "Section 28.04.140 of the Code of the City of Wichita" with the phrase "Unified Zoning Code" when referring to parking requirements.
6. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
7. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
8. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is predominately developed with commercial uses, with the nearest residentially-developed properties located approximately 600 feet to the southeast in the Penstemon 2nd Addition. To the north is a theater and a bowling alley on property zoned "GC" General Commercial and "LC" Limited Commercial. To the east is manufacturing and warehousing on property zoned "GC" General Commercial and a tavern on property zoned "LC" Limited Commercial. To the south is a veterinarian office on property zoned "LC" Limited Commercial and a church on property zoned "SF-6" Single Family Residential. To the west are numerous retail businesses on property zoned "LC" Limited Commercial.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "GC" General Commercial and is currently developed as a commercial parking area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects on properties from lighting, noise, and other factors should be mitigated by the requirements of the Unified Zoning Code and the recommended conditions of approval for the CUP amendment.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. If approved with the recommended conditions of approval, the CUP amendment conforms to the Land Use Guide and the Commercial Locational Guidelines.
5. Impact of the proposed development on community facilities: The use of this property for outdoor storage should have limited impact on community facilities.

KNEBEL "This is an amendment to the Mediterranean Plaza CUP. The applicant has requested that the CUP be amended to permit outdoor storage where the General Commercial zoning exists on Parcel 2. Parcel 2 is outlined and as you can see here, the General Commercial zoning is about 2-1/2 acres, located along Penstemon. The outdoor storage is a permitted use

in the General Commercial zoning district, however, it is not permitted by the CUP. Therefore the amendment has been requested. This is located about 70 feet to the east of the existing Wal-Mart building and would take up a number of parking spaces that are indicated on the site plan.

Since the time the staff report was written, staff has received some correspondence that you should have received a copy of from both the Homeowners' Association to the southeast and from the agent of the applicant. This correspondence represents an agreement regarding the conditions of approval under which the neighboring property owners would like to see this request approved. Based on that, Planning staff has reviewed this and they seem like reasonable conditions, so we have modified our recommendation, which is shown to you on a blue sheet that we handed out. We would like to replace the staff report recommendation with those that are on the blue sheet. I will go through those briefly.

Basically, we recommend the amendment be approved, that the outdoor storage be limited to the area that is indicated on the site plan; with the exception of crushed boxes and some other small items that the outdoor storage be contained inside some type of metal container or a trailer; that the site be screened along the property lines here and here (indicating) and here and here with a 6-foot masonry wall; and that the storage area be screened additionally on these three sides with a solid screening fence a minimum of 12 feet high, but in any event, at least as high as the stored material. The Planning staff also recommends that the landscaping which exists currently today, primarily in the form of shade trees, be supplemented by adding ornamental trees so that you have trees every 15 feet on the exterior of the masonry walls. I am available for questions."

GAROFALO "Are there any questions of Scott?"

OSBORNE-HOWES "Do you have any conversations about what a maximum height might be of that screening? Can it be 100 feet, 75 feet?"

KNEBEL "No, we did not discuss that."

OSBORNE-HOWES "The storage material can't be higher than the screening fence, but..."

KNEBEL "Right. Primarily the reason that we have represented that in there is that the trailers that go on a semi tractor are typically 13 feet 8 inches tall, which would exceed the height of the 12-foot screening that the neighborhood association had requested."

OSBORNE-HOWES "It is just that I have seen other parts of town where you have storage that goes a lot higher than 12 feet."

KNEBEL "Yeah, and I don't disagree that it would make sense to have a height limit on storage material."

HENTZEN "Scott, do you know the rules, what is required now to bring a, is it these 'Box 4 U' ? Is that what you are talking about?"

KNEBEL "Yes, that is correct."

HENTZEN "And do they have to get Conditional Use permits to bring those in, or can they bring them in and put them in their parking lot?"

KNEBEL "The outdoor storage is permitted in the General Commercial and less restrictive zoning districts, and it is required to be screened from public right-of-ways or from residential areas if it is within 150 feet."

HENTZEN "I see quite a few of them around town, and I guess they are using them in place of building a building. But if they have products that won't deteriorate with hot or cold, I guess they would be all right."

KNEBEL "Yes, if they have the appropriate zoning and it is properly screened."

HENTZEN "Okay. If it is properly zoned, and they want to put some in, do they have to come to Central Inspection or to this department to get permission to put them there?"

KNEBEL "Well, if they are going to be building a screening wall over 6 feet they would have to get a building permit for that, so to that extent, they would."

HENTZEN "Okay."

BARFIELD "How many of these units are we talking about storing on this property?"

KNEBEL "Fifty."

BARFIELD "And how many parking spaces are we going to eliminate?"

KNEBEL "It is on the site plan. One hundred and five spaces."

GAROFALO "Are there any other questions of Scott? Are we supposed to have a letter or something from David Farha?"

KNEBEL "You should have received that in the mail. It was mailed out separately because we received it after we sent out our packets. There appears to be some extra copies over here if you want one."

GAROFALO "Okay. We will hear from the applicant now."

BOB KAPLAN "Commissioners, I am appearing on behalf of Wal-Mart. Normally, my platting cases are easy and my zoning cases are difficult, and today appears to be kind of the reverse. Basically, this is a thank-you session. I want to use a minute or two of my time; I don't have a whole lot to add. I do want to thank the neighborhood for the cooperation they have shown in this matter. It has been extensive and appreciated."

Mr. Krout and his staff have been very accommodating and have looked at this with a favorable eye and made some very fine suggestions that have been very helpful to us. Greg Ferris, who has been my liaison with the neighborhood and has done a yeoman's job with the neighborhood associations. The Wal-Mart people in Bentonville who have given me the budget to work with to accomplish all of these things and it is a hefty, hefty, hefty number because we are screening the screening.

David Freerks, who is here today is the local store manager, who has done, I think, an outstanding job of complying with Mr. Schroeder's directives and in keeping the place clean. I think this has come together and it has been a classic example of how people can work together when you have a willing applicant and cooperative neighbors who want to see the problem resolved. So I appreciate that from all of you folks, and I want you to know that.

Basically, we accept staff comments. I really have nothing further to add. There are certain persons here who asked me to reiterate into the record the conditions. Those are set forth in the revised staff report. Do you still wish me to do that? Okay. I am getting a negative response, so we will accept staff comments. We do have requisite parking. The engineer is here. To answer the question of the Commissioner who asked, we do have Code parking. I would like for you to top this whole exercise off if you would. I think it would be just fine if we had a unanimous approval. I think front door to back door, I think everyone is delighted with the result. Thank you all very much. I hope you can see your way clear to do that."

GAROFALO "Are there any questions of Mr. Kaplan?"

OSBORNE-HOWES "Some pictures were passed around. I assume someone may talk about that later. I don't know who passed them around. They are of what the storage looked like in November. There was a lot of outdoor storage that was visible. Does it still look that that?"

KAPLAN "No, ma'am. That was a problem. We have been working on this for a number of months. Mr. Freerks, the store manager, who is present, took all of this material and put it into mini-warehouses here and there. It was a considerable exercise on his part."

I don't know when these slides were taken, but the area is clean, immaculate. I believe everybody is happy with it. One thing I didn't mention and Greg reminds me, is that we have also committed to a regular trash pickup, so we are not going to have parking lot litter and Big gulp cups and that type of thing."

OSBORNE-HOWES "Would you accept a height limit on the screening and the storage?"

KAPLAN "I don't believe there is any problem with that, Commissioner, we are going with a 12-foot high chain link. I think those containers are 8 foot, oh, they are 9 feet?"

OSBORNE-HOWES "It says minimum."

GREG FERRIS "I am representing Wal-Mart. If I might address this. I worked with the engineers on this. That is the standard length of that chain link. That is how it comes, in 12 foot lengths."

OSBORNE-HOWES "So it won't go above 12 feet?"

FERRIS "No. There is no reason for us to do that because it would cost more money."

OSBORNE-HOWES "So will you accept just 12 foot high?"

FERRIS "That would be fine with us."

BARFIELD "My biggest problem with this is that being a regular visitor to this site, I do know that the vintage problem is parking on the west side. Now if we are going to talk about removing all of these parking places on the east side, which I believe is employees' parking, and if there is an increased 143 vehicles on the east side, that is a major problem right now, parking."

KAPLAN "Mr. Ewy is here now. He had stepped out of the room. Do you want to address that, Russ? Or would you rather I did. I turned that over. That was an engineering exercise. I have been advised and understand that we do have requisite parking. I am understanding your comments to suggest that it is the location of the parks that is your issue here?"

BARFIELD "No. What I am saying is, and I also think the letter we received from Mr. Farha says that at the present time you are having complaints from some of the neighboring merchants regarding Wal-Mart customers parking in their parking stalls. I am saying that now we are eliminating these, I believe you said 143 parking places at the rear of the store, and that means that

these employees that are now parking in the rear are going to have to find parking places on the west side. We already have a congestion problem on both sides. How are we going to alleviate that?"

KAPLAN "My response to that is simply that it is a matter of regulation. I don't know that I can tell you what Wal-Mart can do to alleviate that. I can only tell you that we have provided more than the number of parks that we are required by Code to provide. I guess if the Code requirement is insufficient, I suppose my answer would be that we need to amend the parking code to require more spaces per square foot. Right now, we are in excess of what our legal requirement is, and obviously I cannot generate more parking stalls. There may be some redesign that can be done, a certain number, I guess, could be compact stalls, but I would leave that to the engineer. Mr. Ewy, do you have any suggestions you would care to make?"

EWY (from the audience) "Not at this time."

KAPLAN "We just looked at it, Commissioner, from the standpoint of the Code and what we are required to do. So, perhaps you ought to look at an amendment to the Code if it is light. It has been that way for years as far as I know."

BARFIELD "I understand that, but I am saying that we do have a problem at the present time, and I can only see the problem getting worse. We have this letter from Mr. Farha which alludes to the fact that neighboring merchants are already complaining about the parking."

KAPLAN "I am aware of that. I have had communication with Mr. Farha. I think he appreciates the issue and appreciates the fact that we are in compliance. I don't know what else we can do."

GAROFALO "I haven't had an opportunity to read all of this stuff, but apparently the Farhas have made some complaints. Have these complaints been addressed?"

KAPLAN "Yes, they have been addressed. Mr. Farha and I and Mr. Ferris have had communication. We have exchanged correspondence. Those gentlemen are here if you want to hear from them, but yes, everything has been addressed. I think, Frank, front door to back door we have massaged this very, very, very well, and I think everyone at this point is extremely satisfied with the accommodations that we have come to. That is my opinion. If there is someone here to speak against it, I am not aware of it."

GAROFALO "How often is this stuff picked up?"

KAPLAN "They pick up on a daily basis. They do it at night."

GAROFALO "Aren't these storage containers, the bailed cardboard...how often are they picked up?"

KAPLAN "They pick up those bailed cardboards on a multi-daily basis. About three pick-ups a week, depending on the quantity. But keep in mind also, if you will, Mr. Chairman, that all of that bailed cardboard and all of those plastic totes, even though they don't go within the containers, they will go within the storage area. They will be screened until picked up. They are not in the containers themselves, but they are behind the 12-foot chain link, and as we committed, will not extend beyond it. We pick them up two to three times per week, depending on the amount of cardboard. Their business is seasonal, as you are aware."

GAROFALO "I kind of feel somewhat like Commissioner Barfield about the spaces. I understand that legally the store may have enough spaces, but eliminating all of those spaces, and if that is where the employees park, they will have to park elsewhere, and you can't provide any other area for the employees?"

KAPLAN "That I don't know. I am not a frequent visitor to that Wal-Mart. The time I have been out there, there appears to be ample spaces behind. The several times I have been out there throughout the course of this action, there seems to be a great many vacant stalls on the east side of the store that are simply unused. Every customer has to park by the door and that is just the way it is."

MARNELL "Is there still additional parking at the rear of the building for employees?"

KAPLAN "Then I think this is an issue we ought to move on on. People will, in fact, try to always park near the door and that is what creates traffic circulation problems and why they have to police traffic. If this complies, and I have gone through there and have never seen that back lot, any of it full with cars, even coming close. I don't see this as a parking issue."

KAPLAN "That is what I thought Commissioner Barfield was referring to. People won't park behind the store and walk around. They just won't do it."

MARNELL "But this won't create a employee parking problem, moving this 100 plus spaces, which is what it was indicating. That is not going to happen."

KAPLAN "I don't see how that can happen. Mr. Freerks, the store manager is here if you want to address that to him, but I would say the answer to that is negative."

MARNELL "I would assume being a business and not a government that the officials of the business and the employees park farthest away from the service entrance and the customers park closest to the entry. I know that is not the case in some locations, but a business would tend to do that."

KAPLAN "Mr. Freerks is nodding affirmatively. That is their policy that the employees do not take customer parks, but it is hard to be a parking lot policeman, it really is."

BARFIELD "I don't want to belabor this issue, but there are two factors that must be taken into consideration. No. 1, no customers use that parking lot on the east side that I know of. That is strictly for employees. No. 2, if we are going to talk about removing 143 parking places, we are going to have a problem. Where are those employees going to park?"

I, myself was there on Monday and I can assure you that three-quarters of those parking spaces were occupied, so I don't want anybody telling me that removing 143 parking places wouldn't be included in here if it was not necessary, and if it is necessary, where are those employees going to park?"

KAPLAN "Obviously we eliminate parking stalls when we build the storage area, some 150 of them, but obviously only one item can go in one space at one time, so we have to do that. I am simply reiterating, call me redundant, I guess, we have the parking that is required by Code, and I think perhaps the onus here ought to be on the City to change the parking requirements, rather than on the retailer to exceed the legal limit. I don't mean to be argumentative about it, maybe David has an idea about what he can do about it, but I can't create more stalls on the property we own, they just aren't there."

Maybe some re-designing can be done. I certainly am amenable to asking the Baughman Company, who did this, to look at a re-design, because I know that there are regulations regarding that you can so many compact stalls and so on and so forth, and maybe some redesign can be that might be that can add a few stalls, and I would certainly commit, and I know Wal-Mart would be willing to spend the money to look at that. I can't guarantee that it can happen is all. I am not a parking lot policeman or a parking lot engineer."

GAROFALO "Are there any other questions? Okay, is there anyone else besides the applicant to speak on this issue?"

GEORGE SHERMAN "I live at 8609 Stoneridge. I was notified on this case because I happen to own some rental property in the neighborhood. To be honest with you, my property is not going to be affected by this. It is on the other side of Rock Road."

As some of you know, I used to sit up there for a year or two. During that time, Wal-Mart came in four different times for things and I think I voted in favor of them every time. The pictures I am passing around aren't of this building, they are of some of the other buildings they have in town. The first time I remember them coming was 21st Street. We approved that here, I voted in favor of it. A lot of the neighbors, who are mostly people I would call C.A.V.E. people, that's Citizens against virtually everything, came down here and had photos of the east Pawnee store. It showed trucks out back and pallets piled high and Wal-Mart got up and said that is an apparition, we don't let that happen. We have already disciplined that manager. It will never happen again. You have the photos right there. They came in on West Kellogg. They wanted to move the Sam's building back, do some other things, and get close to the neighborhood there on the north. We talked about trucks they had been parking out there and they insisted 'Oh, no. Trucks are here a day or two and then they are out. It's no big problem'. We asked them to put a wall in and they said 'okay, fine'. We said 'what about outdoor storage?' They said 'no storage higher than the wall, we will keep it all low, we will keep it screened behind the wall'. Again, you've got the photos. It is just piled up over the top there.

Then they came in to expand this building. I think there was a 200 foot setback on the south at the time and they wanted to reduce it to 50 foot and they wanted to move the truck dock over there. They had to do that because they wanted to put the grocery in and they needed more parking. They had to have more parking so they couldn't expand into the existing part there, but they wanted to take up the setback. We brought up the fact that they had a bunch of trucks parked out there and they said 'they couldn't be, they are never there more than about two days'. You saw some pictures from back in November; there were 40 or 50 of them around Christmas.

Every time they have come here they have been real nice. They have been willing to talk and then they pretty much ignore whatever they have told you after they get out there. I am not totally against this thing, although personally my opinion is that if they want more storage, they should build a bigger building. I think there are going to be some parking problems out there and I think they will use this screening area until it overflows and then they will go and put stuff wherever they feel like out there. I haven't seen the agreement, but what I heard from the neighbors, I think it has addressed it better than we did at any of the other places. I like the idea that you are going to add more. I would imagine they are planning that chain link with the slats through it. In a year or so, the slats will be broken and coming out...you know.

I think that street back there, you know, when we originally platted all of this stuff, we thought in some ways that that was kind of going to be an alley back there, but it really has turned into a road that accesses the theater and a lot of the office buildings and some other things back there, so I think we have to consider what we do back there."

GAROFALO "Are there any other questions of Mr. Sherman? Thank you. Is there anyone else who would like to speak on this issue?"

DAVID FARHA "Some of the things Mr. Sherman spoke about to reiterate a lot of the things that have come up, we tried to word this to where the homeowners, I am the President of the Homeowners' Association for Wilderness, and we got together with all of the businesses around Wal-Mart and we decided that we wanted to see some cooperation. We understand their

need and we want to try to make this work, but it has to be done to where we can write into the CUP amendment to make them accountable. Okay? So that is what we have tried to do here is to make these stipulations that we are not unreasonable, but they were things that developers and builders and everybody else in other businesses around in the area had to do to get their building built. So that is where we came up with these lists of items.

The pictures that are going around from Mr. Sherman and then the single sheet that has the pictures that we took back in November, showing the condition of the way that they were keeping that back area. We don't want to see that happen again, and that is why we want to try to make it somehow accountable that if things change after this is approved, we need to have some recourse to be able to go back and get it straightened out, but I don't want to have to keep policing things every three months because things weren't taken care of.

A couple of things that I wanted to make sure that got written in that weren't really included on the blue sheet. On No. 1, it talks about the crushed boxes and the plastic tote containers, that those do not have to be inside the storage trailers. That is correct, but they do need to be within that storage area. They also need to be picked up at least once a week. You will see in one of those photos that they have a wall of about 40 feet long of stacked up, crushed boxes that are not being picked up once a week, I guarantee that.

The other thing was, I guess, in your original expansion, they had to enclose the two trash areas. One area has already been enclosed, the other one still needs to be enclosed. That hasn't been done yet. Other than that, we support the recommendations in here, but we do want to make sure that Wal-Mart is accountable for what you guys decide today. Are there any questions?"

MICHAELIS "Mr. Farha, how do you feel about the height of the masonry wall? Everything I have seen go around here is that the wall is kind of half way up on the trailers. Are you okay with that?"

FARHA "What we have tried to do, on the perimeter of the property, where you see the curve lines and the landscaping area, that is where we are proposing the 6-foot high masonry wall. Then, the area that they are actually going to do the storage trailers, the 50 storage trailers, that is where it has to be the 12-foot high fence with the mesh material. So, basically, yes, it is a double screening, but what it does is that it brings into the rest of the neighborhood because the Penstemon subdivision, the Wilderness subdivision, the businesses across the street, the Chalet, Hollow Metal Door, they were all required to put in that same type of masonry wall around their property. So we wanted to get that same look and then still give them their storage area but keep that contained."

MICHAELIS "Okay. Then do you understand, because Mr. Sherman brought up a very good point about that chain link fence and what it is going to look like, do you understand that?"

FARHA "Right. It needs to be maintained. I don't know that using the slats is the more durable of the two. When they design it, it needs to be set up so that either the complete interior has solid steel bumper blocks or something so that when they are loading those trailers in and out they are not just dropping it and pushing it right through the fence."

MCKAY "Did I understand you to say, Mr. Farha, that you wanted some more verbiage to this agreement?"

FARHA "Uh huh. Something to that effect."

MCKAY "That the crushed boxes on the outside should be in the outside storage and picked up weekly. You are wanting to add that to that?"

FARHA "Yes."

MCKAY "What was the other one?"

FARHA "Enclose the trash area. They have another trash area that has not been enclosed yet."

GAROFALO "Are there any other questions of Mr. Farha? Okay, thank you. Is there anyone else who would like to speak in opposition?"

DOUG MALONE "I am at 150 North Market. I represent 3130 Northrock, LLC, Emira-Five LLC, Dr. Max Moss and Alan Schimmel. George Sherman made some good points. I am kind of on the other side of this this time. I am usually developing these deals and working on the side of Mr. Kaplan, but George did make some good points about how Wal-Mart comes in and makes promises and doesn't seem to keep them. When we first saw this proposal, we weren't in agreement with it at all, but after some conversations with Mr. Ferris and Mr. Kaplan, I think Wal-Mart has done an outstanding job of being a cooperative neighbor and as a representative of the adjoining property owners, we are in support of what they are proposing with the changes that David Farha is requesting in the minutes. Thank you."

GAROFALO "Are there any questions of Doug? Okay. Thanks, Doug. Is there anyone else to speak on this? Okay, then the applicant has two minutes of rebuttal."

GREG FERRIS "I am representing the Wal-Mart Company. Just a couple of quick issues. The first thing, I think it is important to understand with regard to parking, is that the area that we are talking about screening here, the entire area was wrongfully, and we will admit wrongfully, used as storage during the Christmas season. We are going to actually have more parking here

than we did in the Christmas season from last year. The employees didn't have any trouble, because they won't let their employees park in the front. Since this is only employee parking, that will not be an issue. So I think that is an important point. We don't plan to use the slats, rather the mesh, which we developed at the Lowe's site if you remember when they did that out west in an almost identical type of situation. They enclosed it, only they went up as high as their building, which was quite a bit higher. Since we are apart from the building, that isn't necessary, and that is why we are not going that high. So, we believe that those things shall take place.

The other reason, frankly, the neighbors are not happy with Wal-Mart. We understand that. We have met with them, and the other reason they want the 6-foot enclosed screening wall is to keep Wal-Mart in. We recognize that. The reason that other areas have those fences is that they are required by Code to have those except for the neighborhoods they like to have them. We are not required for that extra wall, but frankly, we are willing to try and make up for the sins of the past to go not just the extra mile, but the extra two or three miles. So I hope that addresses the issues that were raised. I think that what you have is frankly a plan that goes well beyond.

Wal-Mart thought the fence was zoned commercial and not all of us read Community Unit Plans close. They thought that because it was zoned commercial; they could do outside storage. They were not within 150 feet of the residential property, so they thought they could do it. They got it excessive. We have sat down with Mr. Freerks and informed him of the things that should be expected of him. I think he now understands and I think what the properties look like as a result of that. We also do agree with the amendments that David Farha added. We have no problem with that. I will be glad to answer any questions."

MARNELL "Did I hear reference to the trash area screening that it was a requirement on the building expansion that has yet to be..."

FERRIS "It was not required initially. We actually did the first one voluntarily to try and keep that enclosed as we went through this process. We just went back and said 'let's get those enclosed'. They got one of them enclosed and then wanted to see if that was the right way to do it as we went through this process. So their intention is, and we do agree with that as well, is that will be enclosed when we do this other expansion. No problem there."

BARFIELD "Greg, I have a couple of questions. Are these stationery boxes going to be facing..."

FERRIS "Yes. Those are those stationery boxes that they come and drop. These are not the trailers that you are used to seeing. Frankly, they are allowed by Code to bring those in for a day or two and unload them and those kinds of things. This is a situation where they are 8-1/2 to 9-foot storage containers that they drop. They leave them there. They usually have 8 to 10 of them, but during the Christmas season they might have as many as 40 to 50. Obviously they don't keep them longer than they need to because they have to pay for them."

BARFIELD "Are you familiar with these pictures?"

FERRIS "Are those from David or from Mr. Sherman."

BARFIELD "Mr. Sherman."

FERRIS "I have not seen Mr. Sherman's pictures, I have seen David's pictures."

BARFIELD "The reason I asked is that it appears here that these containers, if these are the containers, that they are stacked. We haven't talked about that."

FERRIS "We do not have any problem if you want to include in there that they can't be stacked one on top of another. We don't do that there. I don't know about that site or why they do it. It is a little harder. I don't know how they unload those, but I don't have any problem with it. Well, you have already included that here 'no storage can be above the 12-foot fence'. So whether we stack it or not is irrelevant. We couldn't go above the 12-foot fence anyway."

GAROFALO "Are there any other questions of Mr. Ferris? Okay, thanks, Greg."

MCKAY "Just for clarification. What you are recommending now is on the blue memo dated April 27 with the changes?"

GAROFALO "That's correct."

MICHAELIS "Marvin, this is a question for you. Is there any kind of a ratio in this kind of a zoning for outdoor storage versus the size of the building?"

KROUT "Well, in Limited Commercial district, and in this case tied by the Community Unit Plan, the maximum that you are normally allowed is 10 per cent of the core area of the building can be in addition to the display and the outside storage. If you have a 100,000 square foot building you can have 10,000 square feet of outside storage and it needs to meet screening requirements in the Code. This is exceeding the 10 per cent and that is why they have to obtain this amendment."

MICHAELIS "I guess I would like to make a comment in reference to this whole thing because I am not a fan of outdoor storage. I think we are starting to abuse it. We sit here and we give it to Dillons and everybody else, and all of a sudden this outdoor storage turns into outside display and we sit here and talk about things that we are doing 3-1/2 miles out in the County and we are not concerned about things that we are doing within our City. I think this is something we need to take a look at. I

don't know that this is the appropriate time, but I think it is something we need to look at. I am just not a fan of this kind of stuff."

WHEELER "I have a question in the letter from Farha regarding the parking issue. There was a reference made, I think, to that they do have adequate parking, but when they put the temporary sales of landscape or something on the west lot, then they are not in compliance with the required storage. I guess I would just like to have a comment from staff on whether that is correct or incorrect. Some of the letters that were sent to us."

KROUT "We asked the applicant to do a calculation. I think Russ (Ewy) has that information."

RUSS EWY "I am the agent for the applicant with the Baughman Company. That was something we took a look at when reviewing this. If you recall, the expansion, the last CUP amendment that they processed some two or three years ago, in addition to adding that 80,000 square feet for the supermarket, they also addressed their outdoor storage for their outside seasonal display area, which takes up 70 some parking spaces, but the calculations consider that."

WHEELER "So they do have the required parking?"

EWY "They do. I think that what was addressed earlier holds true. It is not so much how much parking they have, we do meet Code requirement, but you get into the situation where it is located and I don't think any of the codes require where you actually place your parking stalls."

GAROFALO "Are there any other questions? Okay. What's the pleasure?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is predominately developed with commercial uses, with the nearest residentially-developed properties located approximately 600 feet to the southeast in the Penstemon 2nd Addition. To the north is a theater and a bowling alley on property zoned "GC" General Commercial and "LC" Limited Commercial. To the east is manufacturing and warehousing on property zoned "GC" General Commercial and a tavern on property zoned "LC" Limited Commercial. To the south is a veterinarian office on property zoned "LC" Limited Commercial and a church on property zoned "SF-6" Single Family Residential. To the west are numerous retail businesses on property zoned "LC" Limited Commercial. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "GC" General Commercial and is currently developed as a commercial parking area. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects on properties from lighting, noise, and other factors should be mitigated by the requirements of the Unified Zoning Code and the recommended conditions of approval for the CUP amendment. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. If approved with the recommended conditions of approval, the CUP amendment conforms to the Land Use Guide and the Commercial Locational Guidelines. Impact of the proposed development on community facilities: The use of this property for outdoor storage should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. Outdoor storage shall be limited to the west 200 feet of the north 153 feet of Lot 2, Block 2 of the Home Design Center Addition. Outdoor storage shall be enclosed in storage containers or trailers with the exception of crushed boxes and plastic tote containers. Crushed boxes and plastic tote containers shall be removed from the site at least once per week.
2. A 6-foot high masonry wall shall be constructed along the north, south, and east property lines of Lot 2, Block 2 of the Home Design Center Addition except for the locations of existing access drives. A 12-foot high solid screening fence (chain link with woven black mesh or similar screening) shall be constructed around the north, south, and east sides of the outdoor storage area. In no event shall the height of outdoor storage material exceed the height of the solid screening fence.
3. Existing landscaping along the east and south property lines of Lot 2, Block 2 of the Home Design Center Addition shall be supplemented per a landscape plan approved by the Director of Planning. The additional landscaping shall consist of ornamental trees planted 15 feet apart from each other and the existing ornamental or shade trees. All landscaping shall be located on east or south side of the masonry wall.
4. All areas on Parcel 2 containing trash containers shall be enclosed.

5. General Provision #5 shall be modified to replace the phrase "Section 28.04.139 of the" with the term "sign" when referring to the Sign Code of the City of Wichita. Also, General Provision #5 shall be modified to require that ground/pole signs shall be spaced 150 feet apart on Parcel 2 and at least 150 feet from signs on other parcels in the CUP.
6. General Provision #14 shall be modified to replace the phrase "Section 28.04.140 of the Code of the City of Wichita" with the phrase "Unified Zoning Code" when referring to parking requirements.
7. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
8. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
9. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

MCKAY moved, **LOPEZ** seconded the motion.

OSBORNE-HOWES "Would you be willing to ask that, something that the applicant volunteered, which was to take out the word 'minimum' on item No. 2 and just put 12 foot high."

MCKAY "I have no problem with that."

OSBORNE-HOWES "I have another question, too. Would it be of any use on this chain link with the black mesh just to say something about it being maintained? Does that need to be placed on there?"

KROUT "I think we have a general provision in the Zoning Ordinance that applies to wood screening fences or mesh screening or anything."

OSBORNE-HOWES "Just one comment, and that is that I hope this is tight enough because I know that Wal-Mart does have a bad reputation for that. I know that they are going to create another Wal-Mart in the northwest part of town, and I sure hope that there is something put into the C.U.P. that comes before us on that that takes care of some of these loopholes. It doesn't provoke good community relations nor good customers to have things that way."

GAROFALO "Maybe they could build a building big enough that they could use part of it for that kind of stuff. Okay. Is there any other discussion?"

VOTE ON THE MOTION: The motion carried with 13 votes in favor, and one vote in opposition (Michaelis).

KROUT "This decision is final unless one of the property owners files a protest. He has 14 days in which to do that."

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5. **Case No. ZON2000-00006** - Brant Investment c/o Larry Hackney Owner/Applicant) request zone change from "MF-29" Multi-Family Residential to "OW" Office Warehouse on property described as:

Lots 13, 15, 17 & 19, on Dayton Avenue, Lawrence's 7th Addition to Wichita, Sedgwick County, Kansas. Generally located south of Kellogg and west of Seneca (1117 & 1121 W. Dayton).

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from "MF-29" Multi-Family Residential to "OW" Office Warehouse on a 0.32 acre platted tract located south of Kellogg and west of Seneca (1117 & 1121 W. Dayton). The applicant proposes to convert the single-family residence at 1117 W. Dayton into an office and to construct a 2,000 to 3,000 square foot warehouse in the rear yard of both addresses for use by an electrical contracting business owned by the applicant. Access to the site would be from a paved alley running north from Dayton and parallel to Seneca. The applicant has indicated that he has an informal agreement with the adjoining commercial property to the east for access across their property to Seneca.

The surrounding area is primarily developed with single-family residences. The only commercial business in the immediate area is adjacent to the subject property to the east. Property to the north, south, and west of the site is zoned "MF-29" Multi-Family Residential and is developed primarily with single-family residences with a few duplexes interspersed. Property to the east of the site is zoned "LC" Limited Commercial and is developed with a tavern (Old English Pub).

Off-street parking requirements in the Unified Zoning Code are 1 space per 250 square feet of office area and 1 space per 1,000 square feet of warehouse area. The applicant has indicated that he has an informal agreement with the adjoining commercial property to the east for off-site parking. Without a variance, the Unified Zoning Code permits no more than 50% of the required parking to be located off-site.

Screening requirements in the Unified Zoning Code are decorative fencing, evergreen vegetation, or landscaped earth berms where adjacent to or across the street from residential zoning districts. In addition to screening, the Landscape Ordinance requires buffer tree planting along rear and side boundaries where adjacent to residential zoning districts.

CASE HISTORY: The site is in Lawrence's 7th Addition, which was platted April 25, 1887.

ADJACENT ZONING AND LAND USE:

NORTH: "MF-29"	Single-Family; Multi-Family
SOUTH: "MF-29"	Single-Family; Multi-Family
EAST: "LC"	Tavern/Drinking Establishment
WEST: "MF-29"	Single-Family; Multi-Family

PUBLIC SERVICES: The site has frontage to Dayton, a two-lane paved local street that accesses Seneca (a four-lane arterial) ½ block to the east. Current traffic volumes on Seneca are approximately 19,000 vehicles per day. The 2030 Transportation Plan estimates the volumes will increase to approximately 25,000 vehicles per day. The site is currently served with municipal water and sewer.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "High-Density Residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed zone change does not adhere to either the Land Use Guide or the Commercial Locational Guidelines.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be **DENIED**. However, if in the opinion of the Planning Commission the application should be approved, planning staff recommends that the approval be subject replatting and the following conditions of a Protective Overlay:

1. The zone change to "OW" Office Warehouse shall apply only to that portion of the application area to be used for commercial purposes. Any portion of the application area to be used for residential purposes shall be excluded from the "OW" Office Warehouse zoning lot. The applicant shall submit a revised legal description of the "OW" Office Warehouse zoning lot that excludes that portion of the application area to be used for residential purposes.
2. Only the following uses shall be permitted on the zoning lot: construction sales and service; office, general; and warehousing.
3. The warehouse building shall be setback at least 20 feet from the east property line to provide a loading and parking area.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is primarily developed with single-family residences. The only commercial business in the immediate area is adjacent to the subject property to the east. Property to the north, south, and west of the site is zoned "MF-29" Multi-Family Residential and is developed primarily with single-family residences with a few duplexes interspersed. Property to the east of the site is zoned "LC" Limited Commercial and is developed with a tavern (Old English Pub).
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "MF-29" Multi-Family Residential and is currently developed with viable residential uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Introducing commercial uses into a neighborhood that is used for residential purposes has the potential to cause a decline in the desirability of neighboring properties for residential use and could result in declining residential property values from nuisances such as lighting, noise, odor, etc. from the commercial uses.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "High-Density Residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed zone change does not adhere to either the Land Use Guide or the Commercial Locational Guidelines.
5. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted.

KNEBEL "This item was heard on April 13, two weeks ago and the minutes from that meeting are attached to the staff report. At that meeting, a motion was made to approve the request, subject to the conditions listed in the recommendations of the staff report. This motion resulted in a moot vote, which would have resulted in a failure to recommend approval. A second motion was made to approve 'NO' Neighborhood Office for the east half of the subject property, which was substituted with a motion for a two week deferral, which leads to the case being heard today. Staff doesn't have anything to add to their presentation from two weeks ago; however, the applicant has put together an information packet and I believe has additional information for you."

GAROFALO "Are there any questions of Scott?"

WARREN "I just wondered if Deanna is going to be back?"

GAROFALO "I think Marvin said something about her having to leave at 3:30. Oh, here she is she's back. Are there any questions of Scott? Okay, then, we will hear from the applicant."

LARRY HACKNEY "I am with Hackney Electric. I appreciate you giving this a second consideration. I hope you all received the packets that I mailed to you and additionally today the notarized letters from the two neighbors that would be most affected by my traffic. Other than what I have already sent and distributed to you and the discussions we have previously had, I can't think of anything to add at this point, but I will answer any questions."

GAROFALO "Are there any questions for Mr. Hackney? Not at this point. Thank you. Is there anyone else to speak in favor of this application? Is there anyone here to speak in opposition? If not, we will take it back to the Commission."

WARREN "I don't know that I have a motion. I am not in favor of encroaching commercial zoning in on residential when I think residential has a chance to maybe retrieve itself, to better itself. But I think, in this case, whereas it is almost adjacent to an Interstate Highway, and it is adjacent to commercial, it is not the ideal use of the land, but I certainly don't think it is any worse than what we are going to have if we don't do this."

Then I am looking at the opposite. What if we don't do it? I think if we don't allow this use, probably what we are going to see is just further deterioration. I am going to make a motion."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (1. The zoning, uses and character of the neighborhood: The surrounding area is primarily developed with single-family residences. The only commercial business in the immediate area is adjacent to the subject property to the east. Property to the north, south, and west of the site is zoned "MF-29" Multi-Family Residential and is developed primarily with single-family residences with a few duplexes interspersed. Property to the east of the site is zoned "LC" Limited Commercial and is developed with a tavern (Old English Pub). The suitability of the subject property for the uses to which it has been restricted: The site is zoned "MF-29" Multi-Family Residential and is currently developed with viable residential uses. Extent to which removal of the restrictions will detrimentally affect nearby property: Introducing commercial uses into a neighborhood that is used for residential purposes has the potential to cause a decline in the desirability of neighboring properties for residential use and could result in declining residential property values from nuisances such as lighting, noise, odor, etc. from the commercial uses. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "High-Density Residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed zone change does not adhere to either the Land Use Guide or the Commercial Locational Guidelines. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted.) I move that we recommend to the governing body that request be approved, subject to staff comments.

WARREN moved, **WARNER** seconded the motion.

PLATT "I would like to propose an amendment to the motion because I think we should treat this neighborhood just as fairly as we treated the neighborhood in the previous case."

PROPOSED AMENDMENT TO THE MOTION: That any outdoor storage in the area should be screened with a 12-foot high screening fence. That the west, east and south property lines be screened with a 6-foot high masonry wall from all locations except drives. That in no event shall the height of outdoor storage materials exceed the height of the solid screening fence; and that existing landscaping along the south, west and east property lines shall be supplanted with a landscape plan approved by the Director of Planning.

PLATT moved.

WARREN "The motion maker would think that is a little excessive."

HENTZEN "I am glad to see his cooperative attitude."

WARREN "I wouldn't have any objection to reasonable screening if we thought that was in order."

JOHNSON "Marvin, I have a question about, from a Planning standpoint, how deep in a neighborhood, or off an arterial like Seneca do you consider Commercial zoning? Looking at that zoning, it looks like it varies different depth as you go south on Seneca. I purposely drove down there toward MacArthur, and it appears to me that there are all kinds of different distances if there is commercial property that is zoned back off of Seneca. I guess I am curious as to how, from a planning standpoint, you determine the depth of something like that."

KROUT "We don't have a rule of thumb. I think when you are in older neighborhoods and they are going through transition and redevelopment, you need to deal with those issues on a case-by-case basis. In some cases, those situations tend to grow and you end up saying 'well, it may as well grow to the next block'. That is what happened with the auto dealer off of Kellogg to Orme. Generally speaking, the rules of thumb that we use are that you try not to face a commercial use against a residential use, you try to line up those zoning lines when they are across the street from each other. This one doesn't do that. But I think that you need to deal with them on a case-by-case basis."

JOHNSON "I mean just like the one south of there, apparently it doesn't line up with something commercial across the street and yet if you go clear to the south part of that, it even extends farther into that same type of residential."

KNEBEL "Is the property that you are referring to here? Is that correct?"

JOHNSON "Well, even the ones north of that."

KNEBEL "Okay."

JOHNSON "Straight across the street, apparently is not even zoned commercial on Seneca, so we've got quite a mixture of zoning. It is a tough case."

WARREN "Mr. Chair, did I get a second on my motion?"

GAROFALO "Yes. Commissioner Warner."

MARNELL "My question is did Commissioner Platt offer an amendment to amend the motion, or did he ask the motion maker if he would put that in?"

PLATT "No, I moved to amend the motion."

MARNELL "I don't believe he got a second."

BARFIELD seconded the motion.

PLATT "I think it is important, when we are talking about how we are treating a residential area in terms of how far commercial zoning might go, to realize that we are not talking about commercial zoning here, we are talking about a construction warehouse yard and that is far different than any kind of commercial activity. I just can't believe that we would put a construction lot into a residential area and say we are improving the residences. I was just driving around the area, and one of the things that is very clear as you drive around that neighborhood is that it is in pretty good shape. There is very little 'junk' if you want to use that term, lying around, with the exception of the applicant's area, where about 95% of the neighborhood junk is stored. And all we are going to do is expand it as a constructional warehouse. There are all kinds of electrical contracting equipment there, which is natural. You just don't put that in a residential neighborhood. It belongs in an industrial site, where any contractor's warehouse would be."

It seems to me, after all of the work we went to, protecting folks who have higher incomes up north, yet we turn around and say that this is the best that this neighborhood can have that we are operating on very much of separate standards, and I don't like it."

OSBORNE-HOWES "A couple of you have referred to this as a neighborhood, and correct me if I am wrong, but Mr. Marnell, the last time after the vote was taken commented that this wasn't really wasn't a neighborhood. Do you remember making that statement?"

MARNELL "Yes, I do, and I have been down there. I was referring to those areas right near there and the lots around there."

OSBORNE-HOWES "Okay. But you know, it is a neighborhood. People do live there. I drive that way twice a day. I have driven around and around that block and I was one of those people that really sort of hung right on the line. I could not decide. Since that time, and I think it is interesting that when we started this case today, there was no new information, the applicant got up and didn't say much. There was no discussion. So it is really just a chance to take a vote again as opposed to last time. I guess I am pretty solid in my decision to vote against this. It is a neighborhood. It could very well be targeted for some revitalization. It faces residential on three sides. I just don't see it. I REALLY just don't see it."

WARREN "I think it is ironic that we have had this before us now twice and we haven't had one single voice of opposition to this."

KROUT "That can't be the only reason that you vote on a zoning case is the lack of opposition."

WARREN "I understand that, but generally we pay a lot of attention to it the other way. I saw the sign and a picture that has been posted there, I guess, for some time, indicating that this could possibly be rezoned."

HENTZEN "This letter dated April 11 from the staff man assigned to the District Advisory Board, listen to the last paragraph 'a consensus recommendation was reached between the landowner/applicant and the D.A.B. members to maintain the residential zoning status on the front half of the properties in question. Rezone the back half of the properties in question as Office Warehouse and a Protective Overlay to limit commercial and industrial applications to construction sales and contracting usage types'. All I am trying to value is, are we going to listen to the D.A.B.s or not?"

Normally, they shoot down a lot of stuff because they don't approve it. But here is a case where no neighbors have come up here to protest and they got together with them there under the D.A.B. process and they are saying 'approve'. I am going to vote for it."

MICHAELLIS "I would like to ask Mr. Platt, because I think he made some very good points, but I would question, possibly, the extreme of it. Would you be inclined to go with something like, say more like an 8 foot all the way around and more residential construction in nature? I think a masonry wall is going to get away from the residential, but I think the screening aspect is a good idea."

PLATT "Yeah, I would back off on that. I was trying to make a point. Saying one thing one place and entirely something else someplace else, I don't like, but I would be happy to back off."

BARFIELD "I would like to say that I will vote in favor of the motion, but I think Mr. Platt made some interesting comments. I think it is up to us to maintain the integrity of the neighborhood. That is what we are here for. I am glad to hear him say, though, that he would change the screening on that. I was about ready to change my vote."

WARREN "What do you think, about a 6-foot fence?"

BARFIELD "I was talking about the construction of the fence. I don't think a masonry wall is necessary, but screening of some type."

KROUT "We have some screening requirements in the Zoning Code. You have to screen with a solid screening fence. It can be a wood fence, but it has to be 6 feet tall and solid and it has to screen across the alley to the south and it has to the south, and has to screen along the property line to the west. If there is any outside storage that is visible along Dayton Avenue, it has to be screened from that street."

PLATT "I want to be very clear that I am going to vote against the motion. I was just trying, if this does pass, to at least get some better screening on it."

GAROFALO "Well, we have to have a vote on the amendment. He has amended the amendment."

MICHAELIS "I asked him if he would be amenable to going into an 8-foot wood fence."

GAROFALO "And what was the response?"

PLATT "I said I would be amenable to that."

GAROFALO "Oh, you did say yes?"

PLATT "Yes, but I am going to vote against the final motion anyway."

HENTZEN "What is the screening requirement that you just referred to?"

KROUT "There is a 6-foot screening foot requirement along the west line and along the south line, but if he is doing any outside storage and the requirement is for the height of the fence to substantially screen the storage material. It can be higher if he stores anything higher than 6 feet tall."

GAROFALO "Let the record show that Commissioner Carraher has stepped down and is abstaining from being involved in this discussion."

WARREN "Let me ask you if the amended motion now amended to say an 8-foot fence? Is that what you are saying, George?"

PLATT "I would go along with 8 foot screening fence, yes. But any outdoor storage has to have a 12 foot diminished screening."

KROUT "Even if the outdoor storage is less than 8 feet tall?"

PLATT "Only if it goes over the 8 feet."

WHEELER "It has to be totally screened, is that what you are saying? Nothing to be stored above the fence?"

JOHNSON "Marvin, did you say there can be some outside storage in this zoning?"

KROUT "Office Warehouse allows, if he builds a 3,000 square foot warehouse, he can have up to 3,000 square feet of outside storage, but it will need to be screened."

GAROFALO "Is there any other discussion on the amendment?"

HACKNEY (From the audience) "I have something I would like to say."

GAROFALO "You will have to wait."

KROUT "Is this something about the amendment?"

HACKNEY "Yeah."

KROUT "You do the limitation on outside storage?"

GAROFALO "Step up to the podium. We will see what the problem is."

HACKNEY "The screening is a requirement by Code on the west side, but if I put it on the east side, then I won't have any parking space. That was what Mr. Platt originally said, west, south and east."

KROUT "Was that part of your motion, Commissioner?"

PLATT "Yes."

GAROFALO "I think so, yes."

HACKNEY "And, so I cannot put it there. I don't really see how I can put it on the south because there is nothing there, first of all. But I can put a 6-foot fence there but it is going to prevent me from having any access to my property."

KROUT "Did you intend to have access to your property from the south?"

HACKNEY "I was planning on putting one little door there, just in case, for the back portion there, you know. Those plans are not written in stone, none of them, but secondly, the 12-foot issue, chain link, my proposal to the neighbors and my discussion and my understanding of the Code intent is that a 6-foot cedar wood fence is acceptable. The neighbors are thrilled about it because what is there now is nowhere near that, and to put, I think, that a 12-foot chain link plastic slated fence is far inferior to that wood cedar fence, myself, and probably cheaper. But I think it would do more damage to the neighborhood than a wood fence would."

As far as storage, first of all, the storage that I have there now, basically is a motor home, which most people have in their back yard. I intend to take that elsewhere because there will be no room for storage on this property after this building is built. There is going to be room for the building and for the parking. So it is impossible to put storage units in there. I do own some storage units in the construction business that are similar to the ones you were just discussing with Wal-Mart, but I can't put them there. There is no place to put them if I wanted to. I keep those stored at a separate location. Semi-trailers, office buildings and storage units.

I see it as a moot thing because the landscaping, if you read my letter, I intend to landscape that and make it look better than it does now and meet the Codes. My intentions are to improve the look of the neighborhood, but extreme screening, I think, is detrimental here and there is no possibility for any storage because there is no room."

JOHNSON "Would you be in agreement to state that there would be no outdoor storage?"

HACKNEY "Well, let's clarify what storage means? What storage means is like a storage unit, or a trailer, or what?"

KROUT "Any material outside."

HACKNEY "Material outside? The most recent intention I have had is to put maybe a few things between the existing office and the warehouse, just as a little pathway right through there, where the trash goes. But other than that, there is no place to put anything. My boat and my motor home are already having to go elsewhere because there is no room on the property."

MICHAELIS "I want to make what I think is a critical point. Just so you understand what we are talking about, is that if you agree to no outside storage, there would be no rolls of wire, no conduit, no ladders, nothing being stored outside of the building."

HACKNEY "I think that would be a very difficult situation to put my absolute guarantee on, full-time, 100 per cent, all of the time. I have men who work for me, I can tell them to never put anything there, but that doesn't mean that they won't do it on occasion. It won't be cluttered. The only people that could possibly see that are people coming down Seneca or people going down Dayton. For the people from the other side, it will be screened from the residential neighborhood anyway. I will do my best."

HENTZEN "Marvin, how close can he put his building to the south property line?"

KROUT "The Code says, let's see, this is a four-plex zoning, so there is not a compatibility setback, so I believe it is five feet."

HACKNEY "I think it is five feet. I was planning on going 15 or 20. It is 20 from the east, I believe."

GAROFALO "We have an amendment to vote on. George, can you restate your amendment?"

PLATT "I was just reading off the one we required of the previous one that they have a 6-foot high masonry wall, and I put along the south, west, and east, which is the area that would surround then the warehouse and the outdoor storage, which I think we ought to screen. Then within that, any outdoor storage has got to be within a screening fence. I don't care if you want to set that at 6 foot, too. Just so there would be nothing over the masonry wall. So, let's put that at 6 feet. And that it be landscaped on the east, west and south."

GAROFALO "Okay, does everybody have that?"

WARREN "I am going to oppose the motion, not that I don't think we have need to screen that property, I think we do, whether it be a 6-foot fence or an 8-foot fence, but I don't think we could screen the east side, I think it needs to be screened on the south and the west. So for those reasons, I am going to oppose that motion, and hope we get another motion."

VOTE ON THE AMENDMENT TO THE MOTION: The motion failed with 7 votes in opposition (Marnell, Johnson, Warren, Warner, Michaelis, Hentzen and McKay) and 6 in favor (Osborne-Howes, Wheeler, Platt, Lopez, Garofalo, and Barfield). Carraher abstained.

MCKAY "I want to make a comment about the original motion."

GAROFALO "Okay. We have an original motion to approve, I believe subject to staff comments."

WARREN "Yes, and could I add that I would assume that staff comments mean that we are going to screen the south and we are going to screen the west?"

KNEBEL "Right. The staff comments always consider that any requirement of the Unified Zoning Code will be complied with."

KROUT "Were there any other special restrictions?"

KNEBEL "Well, there is a Protective Overlay that limits the uses and requires a setback on the east side of 20 feet to provide for parking. Those are the primary restrictions."

JOHNSON "What about outside storage? Because he is right, most people who are going to see it is going to be coming down Seneca."

KNEBEL "Well, if he is within 150 feet of Dayton or Seneca, he is required to screen it by Code, anyway."

KROUT "If it is within 150 feet and in view of Dayton or Seneca, he has to do a screening wall. That is what the Code says."

MICHAELIS "Unless I misunderstood him, I thought he was just going to do the west side only."

KNEBEL "He would be required to screen on the west and the south since he is adjacent to residential zoning."

MICHAELIS "From what I am hearing Marvin saying, he would be required to do the east, too."

KROUT "Only if he has outside storage materials would Central Inspection have a problem. If he stored in between his residence, which he wants to convert to an office and the warehouse and it wasn't visible from Dayton or Seneca, it would be permitted."

KNEBEL "Yeah, like with a fence between the two structures or something."

MCKAY "I am not going to be supporting the motion for approval for the same reason as last time. I voted against it because I think we are setting a precedent here. He has no access to the backside of this except through somebody else's property or

an alley way, either from the east or the south and we are talking about if we approve this, he can have a 3,000 square foot building, which is what he is proposing and based on that requirement, he can put 3,000 square foot of storage. We are talking about a lot, an area that is probably 100 feet by 140 feet, and he has to park, too. There are two houses on this 100 feet already, so I can't support the motion. If somebody buys the corner and shuts off his access, he will have no way to get into that parking area."

GAROFALO "Are there any other comments or discussion? Okay, lets have a roll call vote."

VOTE ON THE ORIGINAL MOTION: The motion failed with 8 votes in opposition (Platt, Lopez, Osborne-Howes, Michaelis, Barfield, Wheeler, Garofalo and McKay) and 5 in favor (Johnson, Warren, Marnell, Warner and Hentzen). Carraher abstained.

GAROFALO "The motion fails."

MCKAY "Let the record show that I made a substitute motion when we heard this last time to allow 'NO' Neighborhood Office and the applicant said he didn't want to use that. Is it appropriate to ask him if he would accept that now?"

KROUT "Well, maybe he has changed his mind."

HACKNEY "Of course, I would rather accept that than to get kicked out of my office."

MOTION: That the Planning Commission recommend to the governing body that the east 50 feet be rezoned as "NO" Neighborhood Office to allow his office.

MCKAY moved, **PLATT** seconded the motion.

BARFIELD "So in this motion, how does this effect his original plan?"

MCKAY "He can't build the building. He can utilize the office he has today. That is it."

GAROFALO "Do you want to ask the applicant about that? Okay, Mr. Hackney, would you take the podium, please?"

BARFIELD "I just want to ask you, do you fully understand what this motion entails?"

HACKNEY "Perhaps not. What my understanding of it is is that I can have just an office on the place where I have my office now, and that is the extent of it. I can't build a building, that's all. Or, I can't span two properties with a building."

BARFIELD "And that is acceptable to you?"

HACKNEY "It is a whole lot better than completely, totally losing my investment, yes."

KROUT "I want to be clear that you wouldn't be able to put a smaller building on the back of the house, either, for your warehouse construction business. You wouldn't be able to do that either. An office is an office."

MCKAY "But Marvin, there is presently a garage behind there. Would he be allowed to replace that garage? It is about to fall down."

KROUT "Sure, you can replace the garage, but it only ought to be used as office or parking and not for construction storage."

HENTZEN "I think this motion is to rezone just where the house is."

GAROFALO "Right."

HENTZEN "Marvin, is there anything we could grant him, like a home occupation, without rezoning from residential to office?"

HACKNEY "I am already living in the other house."

MCKAY "And he has more than three or four employees."

KROUT "And not the type of business that he has described."

HENTZEN "Okay."

BARFIELD "I have a question. Regardless of how we vote on this, does the original proposal go before the City Council?"

KROUT "Yes. The applicant's request for Office Warehouse will go from here to the City Council. The Council will not hold a public hearing, but they will take the recommendations from the District Advisory Board and the minutes from the Planning Commission and make a decision. They can still approve Office Warehouse, they can approve Neighborhood Office if it is recommended and they could deny it. They still have the range of options."

GAROFALO "Is that clear? Is there any other discussion? We have a motion to grant Neighborhood Office on the eastern portion of the lot."

MCKAY "The eastern 50 feet, if that is where that house is that."

KROUT "We will identify that between now and City Council."

VOTE ON THE MOTION: The motion carried unanimously with 13 votes in favor with no opposition. Carraher abstained.

Wheeler left the meeting at 3:30 p.m.

6. **CON2000-0007 - Fenton and Karen Shirley (Owner); Sprint PCS (Applicant); Richard Connor Riley and Associates LLC c/o Charles Macheers (Agent) request Conditional Use to permit a commercial communication tower** on property described as:

That part of the Northwest Quarter of the Northeast Quarter of Section 27, Township, Township 26 South, Range 2 East, of the Sixth Principal Meridian, Sedgwick County, Kansas and being more particularly described as follows:

Referring to the North Quarter corner of said Section 27; thence easterly N 88 degrees 41'48" E, on the North line of the Northeast Quarter of the said section 25.60 feet; thence southerly S 01 degrees 18'12" E, 1017.99 feet; thence easterly N 88 degrees 41' 48" E, 237.40 feet, to the point of beginning of the described Lease Site; thence northerly N 01 degrees 18'12" W, 11.00 feet; thence easterly N 88 degrees 41'48" E, 50.00 feet; thence southerly S 01 degrees 18'12" E, 50.00 feet; thence westerly S 88 degrees 41'48" W, 50.00 feet; thence northerly N 01 degrees 18'12" W, 39.00 feet, to the point of beginning of the described Lease Site. Containing a total calculated area of 2500 sq. ft more or less. Generally located approximately 1,000 feet south of 45th Street North and 2,300 feet west of 127th Street East.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is seeking a Conditional Use to permit the construction of a 106-foot commercial communication tower for use by Sprint PCS. The tower would be sited on a 2,500 square foot area located approximately 1,000 feet south of 45th Street North and 2,300 feet west of 127th Street East. Access to the site would be from 45th Street North. The site would be a 50-foot by 50-foot compound enclosed by a chain link fence. Within the enclosure would be a 106-foot monopole and electronic equipment cabinets located on a 14-foot by 17-foot concrete platform.

All of the property surrounding the site is used for agriculture and is zoned "RR" Rural Residential. The site is located approximately 1 mile northeast of Jabara Airport and is within Area C of the Airport Hazard Zone. Structures within Area C of the Airport Hazard Zone are limited to a height of 150 feet without obtaining an Airport Hazard Zoning Permit. Administrative staff with Jabara indicate that a tower in the proposed location will not adversely impact operations at Jabara as long as it complies with FAA regulations.

The application did not provide any documentation regarding the need for the tower or why a tower at this location is the only option for providing Sprint PCS phone service to the area. Subsequently, planning staff contacted the applicant's agent to request such documentation. The applicant's agent indicated that such documentation would not be provided since it is proprietary information; however, the applicant's agent offered to discuss the issues with planning staff without submitting written documentation for the public record. At the meeting, the applicant's agent indicated that the proposed site is intended to off load Sprint PCS phone traffic from other over burdened towers. Since the over burdened towers were located several miles to the south, east, and west, planning staff inquired why an existing tower located closer to the over burdened towers could not be used instead of constructing a new tower. The applicant's agent did not have the answer at the meeting and stated that the question would be answered through a follow-up phone call.

During the follow-up phone call, the applicant's radio frequency (RF) engineer indicated that the new tower primarily is intended to off load Sprint PCS phone traffic from an over burdened tower located near the intersection of 21st Street North and Oliver. The RF engineer indicated that the proposed solution for the over burdened tower is to construct two new towers, one near 37th Street North and Woodlawn in the City of Bel Aire and one on the subject property near 45th Street North and 127th Street East. When asked why a single existing tower near 37th Street North and Webb could not be used instead, the RF engineer indicated that option had been reviewed but it did not provide the optimum solution for the capacity problem.

Since the applicant has not demonstrated that the new commercial communication tower at the proposed location is the only alternative to providing Sprint PCS phone service to the area and since the site is in such a remote location that it likely will not provide service to nearby residents or businesses for decades, planning staff recommends that the Conditional Use be denied. However, the Conditional Use application contained the following statement, "Sprint will be providing testimony and witnesses from industry professionals at the public hearing to answer any questions or concerns regarding the proposed PCS facility." Therefore, planning staff's concerns regarding the need for the tower at the proposed location may be addressed at the public hearing. In that event, planning staff has developed some

recommended conditions regarding landscaping, glare reduction, and lighting should the Planning Commission determine that approval of the Conditional Use is warranted.

CASE HISTORY: The site is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "RR"	Agriculture
SOUTH: "RR"	Agriculture
EAST: "RR"	Agriculture
WEST: "RR"	Agriculture

PUBLIC SERVICES: No municipally supplied public services are required. The site has access to 45th Street North, an unimproved section-line road with no traffic counts available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Agriculture." The Plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Section III.D.6.g of the zoning code lists five conditions that commercial communications towers are subject to meeting: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrate that an effort has been made to co-locate on an existing tower, and willingness to provide space for other communication antennas and related equipment.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be **DENIED**. However, if in the opinion of the Planning Commission the application should be approved, planning staff recommends that the approval be subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The site shall be developed in general conformance with an approved site plan. All improvements shall be completed before the facility becomes operational.
- C. A landscape plan shall be submitted for approval by the Director of Planning, which provides densely planted evergreen trees around the chain link enclosure to lessen the negative visual impact of the site.
- D. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- E. There shall be no lighting of or on the monopole.
- F. The monopole shall not exceed 106 feet in height.
- G. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 30 feet.
- H. Any violation of the conditions of approval shall render the conditional use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property surrounding the site is characterized by agricultural uses. All of the property surrounding the site is zoned "RR" Rural Residential.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential. Commercial communication towers are uses that may be permitted, subject to conditions, in this district. At the time the report was prepared, the applicant had not provided data to show why a tower in the proposed location is the only option for providing service to the area. Therefore, the subject property is properly zoned, and the current restrictions are appropriate.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped, and there are no properties developed with non-agricultural uses in the vicinity. The only impact to be noted at the time this report was prepared is the negative visual impact of a monopole.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Agriculture." The Plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. Section III.D.6.g of the zoning code lists five conditions that commercial communications towers are subject to meeting: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrate that an effort has been made to co-locate on an existing tower, and willingness to provide space for other communication antennas and related equipment. At the time the report was prepared, the request was not in conformance with adopted policies since the applicant has not demonstrated that a tower in the proposed location is the only option for providing service to the area.
5. Impact of the proposed development on community facilities: No impacts have been identified as municipally supplied services are not required.

PLATT "I am going to step down with a conflict of interest. I am the owner of a building that rents antenna space. I am the Chairman of the Board of Directors of the building and we are currently negotiating with these people involved here. Even though, technically, I am not in a conflict because they will be leasing from the applicant, I feel that because of our negotiations, I should step down."

KNEBEL "The property around the site is all used for agriculture. The application did not state why the tower is the only option in this instance; subsequently Planning staff contacted the applicant and was told that the information we had requested regarding the need for the tower and how it fits within the applicant's network is proprietary information and they did not wish to submit that information as a part of the public record. But he did agree to meet with us and explain the requirement for the tower to us without submitting written documentation. They explained that the tower is basically needed to be what is termed as a capacity site. It offloads traffic from overburdened towers in the area that are a part of the applicant's cellular phone network.

Planning staff asked additional questions regarding why this particular location; why this was the only tower that could be used, why other existing towers that are located either to the southwest or to the south of the site couldn't be used. We received a follow-up phone call and the explanation that was given was that they had looked at an existing tower in the Comatara area as a solution to providing the capacity that they needed in this area, but that was not the optimum solution, that the optimum solution was to provide two towers, one that is the subject of the Conditional Use request and another which has been submitted to the City of Bel Aire for approval, that is located near 37th Street North and Woodlawn.

Since the applicant has provided information stating that this is the optimum solution but perhaps not the only solution to the problem, and also since this tower is in an area that is not identified by when the area will develop; it is identified as being outside the urbanizing area for the City of Wichita within the next 30 years, the Planning staff has recommended that this case be denied. However, the applicant has indicated in their application material that they will provide testimony and witnesses from industry professionals at this public hearing to answer any questions or concerns regarding the PCS facility, therefore the Planning staff's concerns regarding the need for the tower at this location may be addressed here at this hearing and in that event Planning staff has provided some conditions of approval, if it is the decision of the Planning Commission that the tower is warranted."

MCKAY "Do you have a picture of the overall area? An aerial."

KNEBEL "Yes, we do."

MCKAY "My question is this. I know that this is a little bit north and practically due east of Jabara Airport. Would a tower of 105 to 110 feet be in the circulation pattern of Jabara?"

KNEBEL "We did contact the airport and they indicated that a tower of this height at this location was acceptable to them."

GAROFALO "Are there any other questions of Scott?"

HENTZEN "I heard what you said. Why are you recommending denial?"

KNEBEL "Like I said, the applicant has not met the condition in the Zoning Code indicating that this is the only solution to providing the PCS phone service to the area. The intent of the Zoning Code is to limit the number of towers to only those that are absolutely necessary and we have not yet received information to indicate that that is the case."

HENTZEN "But this is not a zoning case. It is a Conditional Use case."

KNEBEL "Okay. Conditional Uses are how communication towers are approved in rural residential. It is covered by the Zoning Code."

BARFIELD "Has staff identified any towers in that area that might be an alternative?"

KNEBEL "The one that we spoke with the applicant about is actually two of them. They are located in the Comatara Industrial Park area, near 37th Street North and Webb."

GAROFALO "Are there any other questions of staff? Okay, we will hear from the applicant."

JOHN RILEY "I am here this afternoon on behalf of Sprint PCS. Present with me from Sprint PCS is Mr. Jeff Krehbiel. Jeff is an RF Engineer. He took an afternoon off from work to be here this afternoon. He is responsible for the design and performance of the Sprint PCS network in this area. He will be able to give you a very detailed analysis of the engineering reasons why this site is located. I would just like to take a few brief moments to give you some background about this site. There are three existing Sprint PCS sites currently serving this general area. All three of those sites were co-location sites where Sprint was able to utilize existing towers. In fact, I think some of the towers that have been suggested as a possibility for this site are sites that Sprint is currently already utilizing.

To the northwest, approximately four miles is a radio tower, KLS Radio. Sprint is on that tower. Approximately three and a half miles southeast there is a private tower that Sprint was able to rent space on. About four miles southwest, Sprint was able to negotiate a deal with Southwestern Bell and actually I believe replaced a tower and utilized space on that tower. So Sprint has made every effort to allow for co-location. In this particular situation, this area did not have a problem until the surrounding cell

sites started having capacity problems and for technological reasons that Jeff will be able to go into, as the surrounding cell sites get more and more capacity, the hand sets, the cell phones, if you will, that are further out are not serviced as well.

This problem starts out small and gets bigger and bigger and bigger as time goes on, and Sprint is heading into a situation where they are going to have a very serious service problem, probably by the last quarter of this year.

Sprint has made every effort to co-locate. We are keenly aware of your interest in limiting the number of communication structures introduced into the surrounding area, and I would suggest to you that there are no co-location opportunities that would accommodate this site. As was alluded to, Sprint is looking for a second site and there may be a co-location opportunity over there, but we are working with a neighboring city. With that, I would like to introduce Mr. Krehbiel."

JEFF KREHBIEL "I am the RF design engineer that is handling this part of our market. The reason why I am here speaking to you today is that the service that we are currently providing is degrading. The reason why it is degrading is because more and more users are buying into the PCS phone system because it is a very reliable system. What is happening is that the cell sites are only designed to be able to handle so much traffic, so many users. As we start meeting the capacity of these individual sites, we have to start building fill-in sites which will additionally increase the number of users that can still pass through this area, still be able to use their mobile on their way home from work, their way in to work, or from their residences.

What has ended up happening, and I have a display here; this was taken from stats that I pulled from a Nortel web page, which basically collects data for us to let us know how our system is performing. What I want to point out, and it is very hard to see from the way this is, is that there are three neighboring cell sites, the one that is approximately three and a half miles to the northwest, the KLS Radio station; the site that is north of Andover on the north side of I-35, and then we have a site that is located approximately four miles to the southeast. Those are the three sites that are servicing this entire area."

RILEY "Jeff, can you highlight the subject site? Put a circle around it so people will know."

KREHBIEL "Here is the reference point of the site that we are pursuing today. If you can see, and you may not be able to, the cell site that is covering from the northwest to the southeast is red. It is determined it is red because what is happening is that there are so many blocked calls going into this area that it is saying that is 5 to 10% of all calls that are being processed are being blocked. So when you hit 'send' or 'talk' on your mobile, all you are getting is that air tone. So 5 to 10% of the calls that are being made off of this one site are not being able to be processed.

Then the site that we have here just to the southwest is blue. According to the legend, that is greater than 15% of all of the calls that are being processed on this site are being blocked or dropped. Not able to process. Not being able to call home. So you can hit 'send' and the system is saying that it doesn't have the capacity right now for you, try again. That is what is happening.

And then the last site I want to point out is the site that is just north of Andover. It is serving this area, and it is also at 5 to 10% blocked or dropped. What that does to me, as an RF engineer, it indicates that we have significant problems. We have users or subscribers out there that are paying for a service and our service is getting so overwhelmed that we are not providing that service. So what we are trying to do today is to be able to get permission to build another cell site to bring that level of quality back to you.

I can go into more detail or I can answer any questions you may have, but I just wanted to let you see the layout of what we have done. We have researched in depth this entire area to try to do co-locations and we have exhausted pretty much every possibility of what we can do. We are working with limited resources and we are trying to make the most efficient, the most economical service to you and also meeting our objectives."

GAROFALO "I have a question. Apparently, from your description, you don't have any 'dead spots' there, you are just overcrowded, so to speak?"

KREHBIEL "You are talking about a coverage hole. No, there is not a coverage hole."

GAROFALO "So why is it not possible to add equipment to your other sites that would take care of the additional traffic?"

KREHBIEL "We are currently doing that right now within the city limits of Wichita. We are adding a second carrier, which is basically just giving another frequency that we are operating on. The way that we have to do this site right now is as Woodlawn and Rock Road is where a lot of this traffic is coming from. We are adding additional carriers to that, but it still is not going to reach out to where this new cell site is. What we have is an actual power problem. The coverage is there. You can be out there at your residence if you live in that area and at 9:00 o'clock at night have four bars of receive strength on your mobile and make a call and it is crystal clear. At 7:00 o'clock in the morning, on your way into work, you step out into your car and you need to make a call to somebody, you may be an analog roam. What that is is power. The sites are only pushing out 100 watts of power and the farther you are away from the cell site, you are taking so much power from the cell site to be able to keep that link up. This is a radio. It's a two-way radio is all this is. The sites are set that if you are exceeding a power parameter on trying to keep that phone up, it will automatically drop your call.

I am just going to kind of sketch this out a little bit and maybe make this a little bit easier to understand. (Indicating) These sites are all in relation to the three sites that I just addressed, and 'x' marks the spot for the site that we are trying to get approved. What is ending up happening is folks are coming through and the way the PCS networks work, it is like breathing. The networks are static. We are putting out a certain amount of power and what is happening, when it is in its relaxed state,

you will get the farthest amount of coverage you can have--eight to ten miles, based upon the design of the antenna. The antennas we have are down-tilts and how high the structure is that we are located on. So in a relaxed state, we are able to get a wide area of coverage. A relaxed state means that there are hardly any users on the network.

What happens, just as you are breathing, and you start to work a little bit harder, you start to take those quick, short breaths, what that equates to is that power is being pulled back into the cell site because traffic is being run through. Roads are going through. Travelers are coming through the sectors, and what has ended up happening is the site is saying 'I've got to provide this much power to this many users'. So if you, say up here in the north (indicating) and the traffic is here, it is saying 'I've got to put out 40 million amps of power to you'. Then ten users come through the area here and it has to divide up what it can put out to cover all of those users. What happens is that it terminates the farthest call that is eating up the most power. We've got to be able to add the capacity to the system that can reach out there farther and bring that same amount of quality up."

GAROFALO "So what you are telling me then is that you can't add the capacity to the present sites?"

KREHBIEL "It won't extend us out. The only thing that will happen is that it will handle some of the traffic, but it still won't be to the point where we can bring down the stats that I showed on the previous page down to 5% blocking."

GAROFALO "Okay. I guess you answered my question. Marvin?"

KROUT "The staff report suggested that if you were to take that 'x' with the circle on it and move it about four inches to the left and down, you would be in the Comatara Industrial Park where there is an existing tower. The question we wanted answered three or four weeks ago and still haven't heard a response to is why won't that tower work, or even another tower in the industrial district where it is allowed by right and wouldn't require a Conditional Use?"

RILEY "We are currently working on a site in that area right now, and not far from it, in the City of Bel Aire. That is part of the 'cure', if you will for this overall problem. We do also need a site there, but we also need this site over here."

KROUT "That is the site at 37th Street and Woodlawn, is that what you are saying?"

RILEY "Roughly, I believe, yes."

KROUT "Why doesn't one site at 37th between Woodlawn and this site, which is in the Comatara Park solve the problem. Did you model that?"

KREHBIEL "Yes, we modeled it, both with the design that we have is including that side of 37th and Woodlawn or at the Industrial Park on the existing structure there. This design has incorporated that site also being used. There are formulas that we have to equate in order to meet capacity requirements for a year out from now. Even at the point of the way the market is growing that our subscribers are increasing, that even with that site in Bel Aire and this site, is the only way that we are going to be able to still meet that capacity requirement."

KROUT "There is a site you are looking at in Bel Aire and there is this site, why can't a site be in between those two, which is in the Comatara Industrial Park, work instead? Which is where there is an existing tower."

KREHBIEL "That is the site that we looked at."

RILEY "You are referring to a site in between. We have a map and perhaps you could help identify it."

KROUT "These are kind of tough to identify. Maybe the other map that you have below that one. Scott, could you help?"

KNEBEL (Indicating on map) "You are here in this location here. Why a single tower there rather than a tower here and a tower here?"

KREHBIEL "So, are you saying that the site that we are here trying to get approved, to move that site into this industrial park?"

KROUT "I am saying that there is a tower in that industrial park, and our ordinance says 'let's look at all existing towers before we build new towers, and I am asking whether you investigated locating on that existing tower, which is halfway in between the two towers that you want to build as an alternative, and why doesn't that work?"

RILEY "But again, we are discussing a capacity issue. We need capacity relief provided by two cell sites. You are essentially suggesting that we only get half of the capacity relief we are needing and then center it in an area that it is not really needed."

KROUT "And you are saying that you need two cell sites to solve the capacity problem?"

RILEY "Yes, and I would assure you that given the cost, the time line and difficulty of getting sites approved, any one-site option is our automatic default. Sprint or no other carrier that I know of would say 'let's build two sites instead of building one'. The search area that was given for this site, and there is a fair amount of latitude for movement, typically, when we get a searching from RF, they are half a mile or three quarters of a mile in diameter. This one was actually fairly generous. We could go half a mile east and half a mile west, half a mile south and maybe even as far as a mile north, to become a large oval, more latitude than zoning and site acquisition is used to getting. But coming over here, over two miles would skew the capacity

issue that we are trying to relieve off of these two towers here. And therein lies the quagmire and there is another capacity issue going in this direction.

This site is 250 feet high. This site over here, I believe, is 150 feet high. Significantly taller. You get a fair amount of coverage--you can cover a lot of ground with a 250-foot tower, but they don't have any more capacity of one that is at say, 100 feet. So, like any network being built from scratch, Sprint wants to cover as much real estate as possible as quickly as possible. That is what using these tall, existing towers enabled them to do. Now, we are coming back saying 'yikes, we had our coverage, but now we have some customers and we are getting more customers and we don't have the capacity now that these tall sites are covering too large of an area. We need to put smaller sites in'. We only need to put in a 100-foot tower here.

Your staff report suggested maybe building a tower that could be increased in height in the future. I had asked Jeff if additional height here would help him out now and his answer was no. He doesn't want to be taller than 100 feet here because of the complicated capacity issues at this location. But, this is a pretty good location. If you look at the photographs, you can see there is a high-tension corridor. Those wooden poles we estimate to be somewhere between 90 and 100 feet high. This structure will be relatively close to them. It will be built to accommodate three users. It will be a 100-foot monopole. The additional 6 feet is simply a lightning rod."

OSBORNE-HOWES "I am no expert and I am listening to this and I am hearing staff responding back and forth. When we get cases like this, it always helps me personally that staff has had a chance to look at this and review the documentation as opposed to just what you are presenting to us. I am wondering why we couldn't, at some point, defer this until staff has a chance to look at your information as opposed to just arbitrarily deciding if what you are saying is accurate or not. Am I wrong?"

KROUT "No, I think you are right. Frankly, they may have perfectly good explanation, but we attempted, four weeks ago, to get an explanation. First they told us that it was proprietary, and then they brought in someone who couldn't explain it to us and then they tried to have someone talk to Scott on the telephone about it, and now we are at this point.

I am sorry that we are wasting your time. What we really need to do is have the RF engineer do some documentation and talk to the RF engineer that we can hire, to give you an objective opinion as to whether or not that is an option. We have been able to do that with other applicants and other companies, and I am sorry that we are at this point. It is not a big deal. I do think there is someone who wants to speak on this issue. So you probably ought to take a hearing, but I do think a deferral is a good idea. What we expect and what we have received is cooperation from the other carriers, and I am sorry that we are at this point. We should have gotten this information earlier."

OSBORNE-HOWES "I am just not prepared to vote on this today with it. That is my problem."

MCKAY "Why, gentlemen--why hasn't this information been given to the staff?"

RILEY "It is Sprint's opinion that this is delicate, proprietary, secret information."

MCKAY "If it is so secret, how in the world can we make a decision without having any substantiated facts?"

OSBORNE-HOWES "Can I go further with that? It seems to me that it would make a lot more sense to talk about this with staff rather than in a public hearing that is being taped and is going to be given to everybody."

RILEY "It is the actual written information, and we would have no problem revisiting with staff. This data was not generated at that time. We had the traditional coverage maps that I know you are used to seeing. Unfortunately, they don't convey the capacity issue very well. It shows coverage, but we are still telling you that we have a problem."

GAROFALO "Okay. We will see if there is anyone else that wants to speak on this issue. Thank you. Is there anyone else to speak in favor of this item? Is there anyone here to speak in opposition?"

WILLIAM CHESTNUT "I own a quarter section on the map, right here. (Indicating) It starts here, goes there and over here. I want to speak for myself, and I also want to speak for Frank McMasters because he just got out of the hospital today and they were supposed to take the tubes out and he thought he was going to be able to get here, but I knew he wasn't going to be able to. He owns the quarter section immediately to the east of mine.

Now, let's start over on the description of this. What they are wanting to do is to build a tower between two airports. They did go to one airport, Comatara, and they told them that a 100-foot tower was below what they would be interested in. That is true. Even though that tower is on a direct entrance to the down-wind side of the south runway and would have to end up showing it on a map with people wanting to know immediately why that was right in the way there. But the one that they didn't go to is the one that is important and that is the one immediately on Frank McMaster's quarter. That airport is three-quarters of a mile that way (indicating), directly east.

Now, that airport is a duly licensed airport that has been there for 35 to 40 years and they fly gliders and ultra lights out of there. They commonly fly all over this country out in here, including that land right there and my land, and the airport. Their runway is immediately on the west side, so that makes it closer to this than you might think. But they fly, commonly, at 200 feet and you are going to have a tower here that is 136 feet tall by the definition here. That is not good. They didn't request that information and he is vehemently against this, having towers around there. They even had REA move the line down on their

property line into the ground so that they wouldn't fly into that. Last fall, on the REA line (indicating) right here, which goes right down that line, there was one ultra-light that ran into the REA electric line, going into my property and crashing on my property and starting a fire. He was lucky and was able to walk away from it.

I appreciate all of the technical information they have here, but your information says that you aren't convinced that that is the only one location that they could have it on, and you are right. As I understand it, they now have an option on another piece of land that is still in effect, right now, a mile and a half north of here and a mile west. That would be, in my view, a much better place to have this. The people whose land this is being put on should not have requested this. They are already in violation of our county ordinances, which I don't want to go into. We have just put up with it up until now.

GAROFALO "Mr. Chestnut, your time is up. Do you need more time?"

CHESTNUT "Yes."

GAROFALO "How about 30 seconds? Okay."

MOTION: That the speaker's time be extended.

GAROFALO moved **MCKAY** seconded the motion.

CHESTNUT "But if they want to put towers on their land, which 100 per cent of the people around this are against, and I saw a piece in the paper this morning saying that they were going to be a little more considerate of the people, and just because there are only six or eight people that own land around there, but it still is 100 percent of us against us. I will try to answer any questions."

GAROFALO "Apparently there aren't any."

BOB HARRINGTON "I presently live at 5737 Ayesbury Circle. The land in question doesn't have an address. I bought two years ago; I bought the 70 acres immediately south of the proposed site. I can also speak for Lee Banks, who is not here today, but who owns the 160 acres immediately adjacent to the west of this site.

For the last decade, I have been experimenting with growing wine grapes here in Sedgwick County, and although our family doesn't live on the 70 acres, our hope has been to plant a vineyard, build a residence and maybe one-day license a farm winery on the site. I also have a Ph.D. in Electrical Engineering and have taught courses in Electro Magnetism at Wichita State University, so I am familiar with the technology involved in wireless telephony.

Although I am a bit irritated with my neighbor putting up a tall, ugly tower, I have to admit that I use a cell phone. The fact is that if Sprint offered me several hundred dollars a month to rent a 50 x 50-foot piece of land, I would probably jump at it, so I really can't blame my neighbor for leasing to Sprint. In fact, I would like to build a tall, ugly tower, too.

If we have to have this tower, I have two concerns. First, it would appear to me that from the height and proximity to Jabara Airport, that the Federal Aviation Administration (FAA) may desire some kind of aircraft warning illumination. A bright, blinking red light certainly gets our attention. In fact, that is why the FAA mandates them. Unlike tall TV towers, wireless telephony wires may be as close as a couple of hundred feet to adjacent property and they can, therefore, appear to be twenty-five times as bright.

The latitude and longitude information that Sprint has provided MAPC along with their application are embarrassingly incorrect. They miss Wichita by about 200 miles. Therefore, the people who are in charge of reviewing the aerial obstructions at the FAA Airport's division at Kansas City were unable to tell me whether or not they will require lighting. However, the FAA did tell me that if tower lighting is required, it need only be visible from above. There is no requirement that lights be visible from the ground below. In fact, they suggested that if lighting is visible from adjacent ground in places like the Great Plains, it is due to lackadaisical installation or improper design. Correct me if I am wrong. I think there is a tower at 29th and Greenwich, but I am not sure if it is a wireless telephony tower, and it is lighted.

I would like to suggest that this Commission defer action on this petition for 30 days. This would give staff time to verify with the FAA that tower illumination actually need not be visible from below. Adding language to that effect to this Conditional Use permit, or for that matter to all other wireless tower Conditional Use permits would, I think, be helpful throughout Sedgwick County.

The second concern I have of this Conditional Use permit has to do with the legal concept known as 'inverse condemnation'. In a nutshell, inverse condemnation occurs when a governmental body grants an additional property right to a private party; in this case Sprint, that results in an existing property right being taken away from another party, in this case, nearby rural landowners, such as myself. As an agricultural landowner in rural residential zoning, I have the present right to erect agricultural structures such as silos, water towers, etc., of a height as high or higher than Sprint's proposed microwave tower, simply by pulling a building permit. I don't have to apply for a zoning change, a Conditional Use permit, BZA or nothing of that kind. My concern is that once Sprint or the many other wireless companies that they may lease a portion of their tower to has obtained this new property right some 200 foot north of me that allows them to get up and running. They may very soon claim to have a prescriptive right to an electro-magnetic broadcast easement across my property.

Here is how I see things potentially falling out. Sprint builds its 106-foot tower and starts broadcasting across my property. Some years later, I build a 92-foot irrigation windmill on an existing well head I have, and Sprint's customers begin having problems. Sprint takes me to court and sues me for tortious interference with the conduct of their business. They contend that they are a heavily regulated public business with thousands of satisfied customers, duly licensed and acting in accordance with public regulations. Now comes this adjacent landowner who is interfering with our signal, causing dropouts, etc. For years, our tower has been broadcasting right across his property and we now claim a prescriptive right to continue to do so. Sprint wins and I get to pay them thousands of dollars and tear down my windmill. Does that sound far-fetched? Well, I ran this scenario past one of Wichita's largest law firms, one that has been negotiating tower agreements for local landowners with Sprint. They felt that it was quite plausible and pointed out that it is fully in agreement with how the common law works in the acquisition of prescriptive easements.

I contacted the Deputy Chief of the commercial wireless division of the Federal Communication Commission (FCC) to see what is usually done in such cases. He said that the usual remedy is for the wireless company to raise the tower height. However, in this case, because of the proximity to Jabara Airport, it may not be possible to raise the tower. I am not pleased at the idea of this Commission granting Sprint a new property right, which at the same time may diminish my existing right to use my property at I see fit. I would therefore like to see language added to the Conditional Use permit that expressively preserves the present existing rights of rural landowners, especially the right to erect agricultural structures of similar height upon adjacent property and which conditions the granting and continued Condition Use of this new permit upon Sprint et al taking no actions to interfere with those presently existing property rights.

I realize that the language involved in placing such a restriction may be somewhat complex and I would again ask that action on this Conditional Use permit be put off for say, 30 days to allow the staff to come up with language they might think would be appropriate. Thank you."

GAROFALO "Are there any questions of Mr. Harrington?"

MARNELL "I have a question. It is always very interesting to hear these theoretical positions. Do you know of anyplace in the United States where this has ever happened?"

HARRINGTON "No, and that was why I went to a law firm. I was unable to find any cases to that effect, but as they said, it seems quite plausible from how prescriptive easements are acquired. If you were a \$100 billion industry with thousands of towers scattered around the county, this is exactly what you would be pushing to do."

MARNELL "Well, if your case went through, I think it would probably be the first one."

HARRINGTON "I wouldn't be surprised, but giving the evolving nature of the law, it could quite well happen."

GAROFALO "Are there any other questions? Thank you. Is there anyone else to speak in opposition to this? Okay, then the applicant has two minutes for rebuttal."

RILEY "Thank you. Sprint must obtain FAA approval for this structure. Sprint is proposing now a 100-foot structure very close in height to the existing electrical corridor. We have obtained an aeronautical study, which indicates that it will not interfere with any of the local airports. Nor will it require any lighting. We would be happy to make a condition of no lighting at the 100-foot level.

As to the inverse condemnation, I am sorry I have no comment. The only thing I would like to stress is that this information in its proprietary nature is a little bit different than propagation maps. This really shows all of the weak points in Sprint's system throughout all of Wichita, and their strong points. It is very, very strongly felt by the marketing folks that this information could be very damaging if it were to get in the hands of competitors. I am confident that we can work with staff and a consultant of staff's choice to make our case. With that, I would be happy to answer any questions."

GAROFALO "Are there any questions?"

BARFIELD "If we vote to defer this for 30 days, do you think that you could supply staff with the information that would be sufficient to allow us to make an intelligent decision?"

RILEY "I believe that we can, yes."

GAROFALO "Are there any other questions? Okay, thank you. We will bring this back to the Commission. Do we have a motion?"

MOTION: That the item be deferred for 30 days.

BARFIELD moved, **MICHAELIS** seconded the motion.

GAROFALO "Is there any discussion?"

VOTE ON THE MOTION: The motion carried with 12 votes in favor. There was no opposition. Platt abstained.

KROUT "Is it your intent to leave the hearing open for any additional testimony?"

MCKAY "Yes."

GAROFALO "Okay."

KROUT "And for the record, if we are saying 30 days, it means it is really four weeks, and it will be Thursday, May 25. Is that already a long agenda, Scott?"

KNEBEL "It just keeps getting longer, but it isn't the longest we have had."

KROUT "Okay, it will be Thursday, May 25. Normally, the meetings start at 1:30. We will send a notice out to everyone who spoke and tell you what time specifically your item will start, probably earlier than 1:30."

HARRINGTON "Thank you."

HENTZEN "Marvin, I need to tell you now that on May 24, 25 and 26 I will be in Baltimore, Maryland, and will not be here.

The other thought I have for the staff is does the staff yet have a picture of the county with all of the towers on it, or a map with all of the towers on it, and their heights? Have we come that far yet?"

KROUT "We have one that is about two years old, and it needs to be updated."

HENTZEN "I would say that it does need to be updated, and I would hope that that could be done. We could get a better handle on it every time we have to address this."

KROUT "Okay. I do have more to tell you about wireless after the zoning cases."

- 7. **Case No. CON 2000-00006** - Galen & Georgiana Morris (Owners/Applicants) request a conditional Use to allow a temporary accessory manufactured home on property described as:

Lots 13, 15, 17 & 19, on Dayton Avenue, Lawrence's 7th Addition to Wichita, Sedgwick County, Kansas.
Generally located on the east side of 167th Street west and 1/2 mile south of Central, Goddard, Kansas.

BARRY CARROLL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicants are requesting a Conditional Use permit to allow a temporary accessory manufactured home on an unplatted 4.8-acre tract of land. This property is zoned "RR" Rural Residential and is located on the eastside of 167th Street West and a half-mile south of Central. The applicants state that they need a place to live while they remodel their existing site built home. Currently, the applicants are living in a doublewide manufactured home east of the site built home. The applicants reported that they have spoken to their neighbors to the north about this request. The neighbors have no objections, according to the applicants. There are two neighbors, however, who have written letters of opposition (see attachment). The applicants anticipate the remodeling project to be completed within one year.

The Planning Commission for Goddard, Kansas considered this request on April 20, 2000. The Commissioners voted 6-0 to recommend approval subject to MAPD staff comments. There were no citizens present to address this request.

The applicants have presented a site plan for review (see attachment) with the location for the temporary manufactured home. Access to the temporary manufactured home is along the existing driveway and east of the existing site built home. The property to the north has a manufactured home and is zoned "RR" Rural Residential. The properties to the south, east and west are undeveloped farm fields that are zoned "RR" Rural Residential. The Unified Zoning Code (UZC) allows the placement of a temporary doublewide manufactured home while a "single-family dwelling is being constructed on the same lot" without a Conditional Use permit. County Code Enforcement has taken the literal interpretation of the Code and excludes home remodeling as an allowable condition for the temporary use without a Conditional Use. This condition triggers the need for this application for a Conditional Use under Section III-D.6.1. (3) of the Unified Zoning Code.

Section III-D.6.1.(3) of the Unified Zoning Code permits manufactured homes as accessory structures provided:

- a) The location of the manufactured home shall conform to all setback requirements of the district in which located;
- b) The lot area of the manufactured home need not comply with the area requirements of the zoning district, provided that the unit is connected to a public water supply and a municipal-type sewer system, the minimum lot size shall be determined by the County Health Department;
- c) The unit shall comply with all the standards of Section III-D.6.1.(2);

- d) The applicant shall show due cause that hardship exists and that the hardship cannot reasonably be alleviate without the granting of the Conditional Use; and
- e) The Planning Commission shall determine a reasonable time limit for each individual case. The manufactured/mobile home shall be removed from the property within 90-days after any change in the circumstances used as a basis for the Conditional Use.

CASE HISTORY: None.

ADJACENT ZONING AND LAND USE:

NORTH:	"RR" Rural Residential	Single-Family Residence
EAST:	"RR" Rural Residential	Undeveloped Farm Field
SOUTH:	"RR" Rural Residential	Undeveloped Farm Field
WEST:	"RR" Rural Residential	Undeveloped Farm Field

PUBLIC SERVICES: There is a water well and septic system on site that services the main structure; these services are being used for the temporary manufactured home. The site has access to a private driveway, which is to be maintained by the property owners. The private road feeds onto 167th Street West; this street is approximately a half-mile south of Central. 167th Street West is a township road with no traffic data available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "agricultural" use. This category has the intent of protecting agricultural resources and is meant to accommodate agricultural operations on substantial acreage. This category can allow other uses common in rural areas, which are no more offensive than normal agricultural uses.

RECOMMENDATION: The property will be developed in general conformance with the site plan approved by the MAPC or County Commission. Based on the information available prior to the public hearing, and a site plan showing the location of the manufactured home, MAPD staff recommends the application be APPROVED, subject to the following conditions:

- 4. The applicant shall obtain all applicable permits including, but no limited to: building, health and zoning. Specifically, the requirements of Section III-D 6.1. (3) of the Unified Zoning Code shall be met.
- 5. The accessory home shall remain on the site as an accessory dwelling for the applicant and his family, for a period of one year, while the existing site-built home is being remodeled.
- 6. The temporary manufactured home shall be removed within 90-days of the completion of the remodeling of the existing home; however in no case shall the temporary manufactured home remain on the property more than one-year from the date of approval of this Conditional Use. If additional time is needed, the applicants may file for an extension of the Conditional Use permit.
- 7. The temporary manufactured home shall be placed on the site as indicated on the site plan (see attachment).
- 8. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

This recommendation is based on the following findings:

- 4. The zoning, uses and character of the neighborhood: The application area, and all property adjoining it, is zoned "RR" Rural Residential. Large lot single-family homes and agricultural uses characterize the area.
- 5. Extent to which removal of the restrictions will detrimentally affect nearby property. Given the rural nature of the application area and temporary nature of the use, there should not be any detrimental effects on nearby properties.
- 6. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Map of the Comprehensive Plan identifies this area as appropriate for "agricultural" use. The category can allow other uses common in rural areas, which are no more offensive than normal agricultural uses. Given the rural nature of the application area and the temporary nature of the use, there should not be any detrimental effects on nearby property.
- 7. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned "RR" and is developed with a single-family home. The site could continue to be used as currently zoned, but the applicant would not be able to remodel his home and live in it at the same time.
- 5. Impact of the proposed development on community facilities. None identified.

CARROLL "This is within the Goddard three mile area of influence and the Goddard Planning Commission voted 6-0 to recommend approval, subject to MAPD staff comments. Should this be approved, the applicants would have no longer than one year from the time this is approved to make all of the appropriate remodels. If the applicant finishes within six months, they would have to remove their double-wide within 90 days of completion. I would answer any question you might have."

MICHAELIS "How long has that manufactured home been there now?"

CARROLL "I will have to defer to the applicants."

GALEN MORRIS (From the audience) "It was moved in September. I had checked with County zoning before I put it in there and they said to just come buy a permit. No problem. So I bought the permit and moved the house in and they called me later on and said that they had messed up and they shouldn't have sold me a building permit to put it there."

HENTZEN "Barry, on Page 4, Paragraph 3, does the last sentence make sense? 'If additional time is needed, the applicants may file for a removal of the Conditional Use Permit. Don't you mean an extension?'"

CARROLL "I think so. You are right."

HENTZEN "Okay."

GAROFALO "Are there any other questions? Okay, we will hear from the applicant then."

GALEN MORRIS "I own the property in question. Like I told you a minute ago, I had purchased a building permit to put the house there prior to putting it there. They issued me one and I moved the house in, got utilities hooked up, and then they came to me and said that I was in violation and that they shouldn't have sold me the building permit to put it there."

So all I am trying to do is just to stay in code with Code Enforcement by getting approval on this permit, within a 12 month period of time. I have already started negotiations of leasing, with option 20 acres behind my existing five acres, to put the house there as a permanent residence. So the 12 month issuance of this permit will allow me time to get new utilities put in on the 20 acre lease with option."

GAROFALO "Sir, are you talking about this manufactured house?"

MORRIS "The double-wide you saw in the picture, yeah."

GAROFALO "That is what you are going to move?"

MORRIS "Right."

GAROFALO "Can he do that?"

KROUT "Yes, I think he is going to have to plat the property, but yes."

MORRIS "No, they said that I wouldn't have to plat as long as it is a 20-acre configuration. It just has to be surveyed in that 20-acre configuration."

WARREN "You have five acres now and you are going to get 20 acres for it. What are you going to do with the five acres then? Are you going to remodel a home there, is that it?"

MORRIS "Right. The existing house that is already there."

WARREN "You are going to remodel it, retain it, and then move your double-wide back to the 20 acres?"

MORRIS "Exactly."

WARREN "And you need a year to do this."

MORRIS "Yeah."

HENTZEN "I was kind of thinking about that too, Galen, because I went out there and looked at it. I was wondering if you got in there tearing it out....do you have plaster or sheet rock?"

MORRIS "It's plaster."

HENTZEN "Yeah. I thought that sometimes when you get into those older places and you start to tear them out and get halfway done or get it halfway torn out and say 'I'm not going to fix this place'. I want to ask, if he decided to tear it down, could he then leave his double-wide where it is?"

KROUT "He would have to attach it to a permanent foundation or else ask for mobile home zoning."

HENTZEN "I thought it was attached to a permanent foundation."

MORRIS "No. It is just blocked and skirted."

HENTZEN "Just blocked and skirted. Okay."

MORRIS "Well, see, this is the second step in my remodel. I have already gutted about half of the house out already. I do that for a living, so I know what I am getting in to."

HENTZEN "Okay."

GAROFALO "Are there any other questions? Okay, thank you. Is there anyone else here to speak? I guess not. Unless your wife wants to speak."

MORRIS (From audience) "And she would probably be in opposition. She wants to tear the old house down." (laughter)

HENTZEN "I was wondering why she was smiling."

GAROFALO "Okay. We will take it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The application area, and all property adjoining it, is zoned "RR" Rural Residential. Large lot single-family homes and agricultural uses characterize the area. Extent to which removal of the restrictions will detrimentally affect nearby property. Given the rural nature of the application area and temporary nature of the use, there should not be any detrimental effects on nearby properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Map of the Comprehensive Plan identifies this area as appropriate for "agricultural" use. The category can allow other uses common in rural areas, which are no more offensive than normal agricultural uses. Given the rural nature of the application area and the temporary nature of the use, there should not be any detrimental effects on nearby property. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned "RR" and is developed with a single-family home. The site could continue to be used as currently zoned, but the applicant would not be able to remodel his home and live in it at the same time. Impact of the proposed development on community facilities. None identified.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The applicant shall obtain all applicable permits including, but no limited to: building, health and zoning. Specifically, the requirements of Section III-D 6.1. (3) of the Unified Zoning Code shall be met.
2. The accessory home shall remain on the site as an accessory dwelling for the applicant and his family, for a period of one year, while the existing site-built home is being remodeled.
3. The temporary manufactured home shall be removed within 90-days of the completion of the remodeling of the existing home; however in no case shall the temporary manufactured home remain on the property more than one-year from the date of approval of this Conditional Use. If additional time is needed, the applicants may file for an extension of the Conditional Use permit.
4. The temporary manufactured home shall be placed on the site as indicated on the site plan (see attachment).
5. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

LOPEZ moved, **WARNER** seconded the motion.

GAROFALO "Is there any discussion?"

VOTE ON THE MOTION: The motion carried with 13 votes in favor. There was no opposition.

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9. **Case No. A 00-03** - Unilateral annexation by the City of Wichita of property generally located south of 45th Street North and west of Webb Road (Phase III).

KROUT "Commissioners, this is the third phase of the annexation of the remaining parcels of land that are on 45th Street North and Webb Road. It is part of the city's series of annexations. We recommend that you find that this annexation would be consistent with the Comprehensive Plan."

GAROFALO "Is there any discussion on this? Can we have a motion?"

MOTION: That the Metropolitan Area Planning Commission find that the unilateral annexation is compatible with the adopted Comprehensive Plan.

LOPEZ moved, **BARFIELD** seconded the motion, and it carried unanimously (13-0).

10. Other Matters

GAROFALO "Are there any other matters to come before us?"

KROUT "I have two items. They both concern briefings that the City Council requested. We have them Tuesday morning. You read about one, it has to do with the Wireless Plan. I think this case will tell you that the Wireless Plan and any zoning amendments aren't going to entirely remove the problems and decisions that we are going to have make. There are going to be some Conditional Uses and there are still going to be some people who are notified that are going to be in opposition, and there still might be some cases that are going to be more difficult. Hopefully they are not all going to be like this one, though.

But if you remember back in November there was a Wireless Plan draft submitted by a consultant. A staff task force has taken that plan, worked over it several months, had several drafts. Scott has done most of the work on this, by the way, on revising that plan. We have done draft revisions of the Zoning Code to try to get a little better handle on this issue. We have met with both the industry, meaning both carriers and tower developers, and we have met with neighborhood interests two or three times over that process, and if you read the newspaper article, then you probably have a fairly good idea about where it is. The industry is pretty satisfied with it, the people who are tower speculators and developers are less happy with it, but we are treating them about the same in the proposed new ordinance as we do today.

The City Council said they were satisfied to send this now to the Planning Commission for your consideration and to have a public hearing. I am waiting for the County to tell me if they want a workshop or if they are satisfied to go ahead. But we are probably looking at a hearing in June, probably in mid-June, and we will send you out, in your next packet or separately, a copy of this revised draft of the Wireless plan and the proposed zoning amendments."

WARREN "It just seems ironic to me that we are taking one industry and kind of discriminating. If you left Rock Road and went west down 55th Street, we have some brand new transmission lines that went in there that have to be 100 foot tall. We never heard a thing about that. We have 100-foot poles on a ball field with no concern. It just seems to me like it would be like putting electricity in 50 years ago and saying that they could only have one pole per block. We want the electricity, but they only get the one pole per block."

GAROFALO "It would have been nice if they could have done that."

HENTZEN "Marvin, I think at the beginning of the year you set out a schedule of MAPC meetings, but I think we said at the time that we were going to put out another one for the last half of the year. Are you about ready with that?"

KROUT "Right, and I think that had to do with trying to synchronize with the D.A.B.s? I think we did a list that went all the way out to December and said we would revisit it if we needed to."

HENTZEN "We didn't adopt it though. We only approved half."

KROUT "Yeah. We will bring that back to you. We are just now getting the D.A.B.s going and they are figuring out what their schedule is."

HENTZEN "Okay."

MARNELL "I don't want to extend this any longer, but with that case, it was a fairly simple case and it passed under the new ordinances, or that would still be one we had?"

KROUT "That one still would have been required to be a Conditional Use. What the staff will be able to approve administratively are very short towers, shorter than 100 feet, and otherwise you will see those. Unless the property is zoned Commercial or Industrial."

KNEBEL "The new plan would require written documentation of the things we have asked for, in this case, as part of the application. The applicant wouldn't have the luxury of saying yes or no to it. They would be required to provide official documentation on the case."

JOHNSON "One of the guys in opposition on that last case on the tower brought up a comment that he could build a windmill or a silo and not get any permit. What would keep these tower people from going to a farmer and say 'hey, I will build you a silo'?"

KROUT "Well, if it is going to be no taller than 85 feet tall and it is disguised as a silo or a windmill, they will be able to get administrative approval and not have to file the case. Watch for those."

GAROFALO "Before everybody leaves or before we adjourn, Harold and John have said that they will not be at the May 11 meeting. Also Commissioner Michaelis won't be here either. Is there anyone else who will not be here? Okay."

KROUT "The other subject that we were asked to talk about was access management. We have talked about that a little bit, and have had a couple of plats, and I think that is what generated the interest on the part of the City Council. What we showed them-- and we realized that it was about 3 years old, so you probably haven't seen it, and we would be glad to show you,-- but it is a little video that runs 14 minutes long from the Federal Highway Administration on access management.

Then we followed up with some comments, and what we were suggesting is the best way to go forward is to do a consultant study. We have several vacant positions in Transportation Planning, so we haven't been able to get to do this ourselves, but we have some salary savings so we can hire someone. It is probably a better way to go anyway, to try to develop some standards and work with a task force, which would include representatives of the Planning Commission trying to develop some standards, so people have a better expectation of what to look forward to in the future. Again we are in the position of where if the County thinks that is a good idea, then we will proceed on with that."

GAROFALO "Marvin, is there anything new to report on the Comprehensive Plan activity?"

KROUT "I have met with all of the County Commissioners. I have not met with any of the City Council members, but I have some meetings set up. We have talked about what, if anything, they want to see possibly modified in terms of language in the Comprehensive Plan, what they would like to see reviewed by the Review Committee that was discussed. There seems to be some consensus on that, and I will find out more when I talk to the City Council. I think that we probably will be getting together before the end of May. And on the Review Committee we haven't discussed appointments."

GAROFALO "Is there anything else to come before this body? Can we have a motion to adjourn?"

MOTION: That the Metropolitan Area Planning Commission adjourn.

CARRAHER moved, **WARNER** seconded the motion, and it carried unanimously (13-0).

The meeting was adjourned at 4:40 p.m.

State of Kansas)
Sedgwick County) ss

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2000.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)